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APPENDIX

Supreme Court of the United States

October Term, 1973

No. 73-998

NORVAL GOSS, et al.,
Appellants

v.

EILEEN LOPEZ, et al.,
Appellees

On Appeal From a Three-Judge United States District Court for the Southern District of Ohio Eastern Division

VOLUME I OF II

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, et al.,
Appellants.

v.

EILEEN LOPEZ, ETC., et al.,
Appellees.

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

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Judgment of District Court Included in Jurisdictional Statement at Pages 18-19

For instance, first I will take the testing thing. We have, in Columbus, a testing week which used to be in October and I think it's been expanded now to two weeks. Of course now it's also in April. They have changed that time, but if a student, all tenth graders are required to take three tests. An intelligence test, an arithmetic achievement test and a language test.

Now, if a student is absent during that time, he more than likely will not be able to make up that test because the way the testing schedule is set up, you are to take tests during a specified time. Usually makeups are given toward the end of that period, but once that period of one week or two weeks, whatever, is over, they don't get a chance to take the test.

Now, that test is important. Now, this is just for tenth graders I am talking about. That test is important because the Columbus Testing Profile is a part of the student's school record, and you can see a comparison on national norms, you know, where the student falls below average, average, or above average, with other students across the nation.

The Court: Are there other things similar to this that if a student were out for a **(page 104)** given period of time, he might miss and not be able to make up? A. Yes, like the Ohio tests of scholastic achievement. This is something that a student volunteers to participate in, but the ratings or rankings are given dependent upon how you score in the sub category in your school. If you score in the top fourth of the category in your school, like in biology for instance, then you are eligible to go to State competition.

It is very desirable to have on a student's record that he finished, say, first, second, or even fifth, in his school in biology.

Q. If you miss some of these contests, can you—A. It only occurs once a year, so you get it the next year, and then there are contests like the Voice of Democracy, like Americanism in Government tests. There are a number of things that occur.

These things that I am mentioning, I administer these in the schools. There are college conferences that I conducted at least, you know, one a week; some times two and three a week. Okay. If a certain college, or two or three colleges, you know, come in at a particular time that a student is suspended, they only come once a year, so they don't get to talk with the admission counsellors and things like that.

Q. Do suspensions, in your judgment or experience in the Columbus system, have any role in the tracking system in **(page 105)** Columbus?

Q. Could you describe the tracking system as it operates in Columbus? A. Yes. We do have a tracking system in Columbus. What I mean by that is that you have in general four placement categories of students, starting from the top you have honor students or students that are placed in honor classes, and then you have what we call just the regular classes. Then going down the hierarchy, the modified classes, and then the special classes.

Now, each of these categories has to do with a student's ability to do work, you know, based on what they have done in the past and based on perhaps IQ scores. That's part of it too, because you are placed in special based on IQ tests.

Q. You have described the tracking system. Could you describe in your experience very rapidly how a suspension may affect the ability to move from one track to another? A. Well, in a general way, and of course now this is; you know, my observation and my opinion, but many teachers seem to equate decorum or behavior in the classroom with educational ability, or if not educational ability, educational interests and attitude. Okay.

Now, I am saying that I have seen in some cases where because of the student's —

Mr. Bustin: Objection . . . **(page 106)**

Q. Mr. Horton, can you just briefly, sir, explain how this suspension may affect tracking? A. Students are some times allowed, depending on their progress in school, to move from one track to another; say from modified to regular. Okay. Or, it can go the other way, from regular to modified, and I am saying that, you know, a student's behavior can influence this kind of decision.

That's what I am saying, and some times does. That's all I am saying.

Q. The track you are in influences many other things as well? A. Yes.

Q. As a guidance counsellor, were you regularly asked to give college recommendations? A. Yes. In fact that was my responsibility for two years, one of my responsibilities like the last two years.

Q. Did you rely on a full file that was given to you in assessing a student in filling out recommendations? A. Yes, and I tried to submit as complete information to a school as possible

Q. Do these files often contain letters of suspension of a student if the student has been suspended? A. Yes.

(Colloquy between Counsel and Court) **(page 107)**

By Mr. Roos:

Q. While you were a guidance counsellor, did you receive inquiries from potential employers of students who were —

The Court: That's another question along exactly the same line.

Mr. Roos: I have nothing further of this witnes.

CROSS-EXAMINATION

By Mr. Bustin:

Q. Mr. Horton, in speaking about this tracking record that you did, or, no, let's talk about th se special tests and stuff you were talking about that were given only once a year. If the student at the time this particular test was given happened to be sick or otherwise involved, would he miss that test also then? A. Yes.

Q. Mr. Horton, have you examined the cumulative files of the particular plaintiffs involved in this litigation? A. No.

Q. Do you know anything of their personal background or behavioral characteristics? A. No, I do not.

Mr. Bustin: Thank you. **(page 108)** No further questions, Your Honor.

The Court: That's all. Thank you, Mr. Horton, for coming here. You are excused.

(page 109)

(Certificate of Court Reporter Omitted in Printing)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. 71-67
(Title Omitted in Printing)

(page 2)

PROCEEDINGS

Before the Honorable Joseph P. Kinneary, Chief Judge, sitting at Columbus, Ohio, July 16, 1973, Addendum to Transcript of Testimony.

The Court: Who do you wish to call now, if anyone?

Mr. Bustin: Your Honor, before I go to that point, I would like to renew our motion to dismiss. We do not believe that the evidence presented today, there has been a showing of involvement —

The Court: I will consider your motion to dismiss upon the grounds that you have set out in your trial memoranda, all your trial memoranda, and your pretrial brief.

Mr. Bustin: We would like for the record to renew our objection to the testimony of both psychologists and Mr. Horton, and move that it be stricken as pure speculation.

The Court: That is over-ruled.

Mr. Bustin: Just one second. May I have one second?

The Court: Yes surely.

THEREUPON followed a discussion at defense counsel table.

Mr. Bustin: With the witness that we put on out of order, the defendants will rest.

• • •

(Certificate of Court Reporter Omitted in Printing)

EXHIBIT 1(A)

Superintendent of Schools - Harold H. Eibling

CENTRAL HIGH SCHOOL
75 Washington Boulevard, Columbus, Ohio 43215

February 26, 1971

Mr. and Mrs. Manuel Lopez
831 Franklin Ave.
Columbus, Ohio

Dear Mr. and Mrs. Lopez:

We have had a continued problem in school for several days and today a group of students disrupted our complete school program.

Dwight was in the group and we need to have a personal conference with you and Dwight to determine what the problems may be.

Please keep him at home until a conference can be arranged. This will take some time. We will be communicating with you.

Respectfully,

CALVIN PARK
Principal

EXHIBIT 1 B

Superintendent of Schools - Harold H. Eibling

CENTRAL HIGH SCHOOL
75 Washington Boulevard, Columbus, Ohio 43215
Telephone 224-3184

March 1, 1971

Mr. and Mrs. Emanuel Lopez
831 Franklin Avenue
Columbus, Ohio

Dear Mr. and Mrs. Lopez:

It will be necessary for you to appear at the Board of Education before Dwight returns to school. I have given your telephone number to Mr. Williams of the Pupil Personnel office of the Board of Education. He will be in touch with you to set up an appointment.

Dwight is to remain home during the hours school is in session.

Yours truly,
JAMES C. FURGASON

EXHIBIT 1 C

61 S. Sixth St.
Columbus, Ohio 43215
March 5, 1971

Mr. & Mrs. Emanuel Lopez
1112 Miller Avenue
Columbus, Ohio

Dear Mr. & Mrs. Lopez:

An appointment has been arranged for you and your son, Dwight, to appear at the Pupil Personnel Office on Monday, March 8th, at 8:30 a.m.

Sincerely,

H. M. WILLIAMS, *Director*
Pupil Personnel

EXHIBIT 1 D

COLUMBUS PUBLIC SCHOOLS
270 East State Street, Columbus, Ohio 43215

March 24, 1971

Mrs. Eileen Lopez
1112 Miller Avenue
Columbus, Ohio 43206

Dear Mrs. Lopez:

I have received a letter from your daughter, Mrs. Alana Robinson, pertaining to your son, Dwight. She was inquiring as to the status of Dwight and his returning to school in Columbus.

As you no doubt recall, I had scheduled an appointment with you and Dwight on March 8, 1971 at 8:30 a.m. The purpose of this conference was to discuss various possibilities relating to Dwight's future educational plans.

This appointment was not kept nor did I receive from you a request to set up another conference. Since Dwight is 19 years of age and is no longer of compulsory school age, I thought that possibly you had made other plans for Dwight.

In regards to Dwight's placement in a Columbus School, permission is granted for him to enroll in Adult Day School, 272 S. Nelson Road, immediately. Waiver of fees is being recommended.

Sincerely,

H. M. WILLIAMS, *Director*
Pupil Personnel

EXHIBIT 1 E

COLUMBUS PUBLIC SCHOOLS

ACADEMIC RECORD

Form 39
REVISED - JUNE 1968

Eastgate Central SENIOR HIGH SCHOOL
(To be Retained)

NAME Lopez (last) Dwight (first) Anthony (middle) HOME ROOM

ADDRESS 1112 Miller Avenue PHONE 253 3485

RESIDES WITH Manuel Lopez RELATIONSHIP

DATE OF BIRTH DATE ENTERED

	DATE	REASON
WITHDRAWN	3/25/71	adult day school
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

PHOTO

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME

ADDRESS

PHONE

Exhibit 1 E continued

Eastmoor HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME: Lopez Dwight Anthony (Last) (First) (Middle)

SEX: M DATE OF BIRTH: 7 12 51 PLACE OF BIRTH: Columbus Ohio

PARENT OR GUARDIAN:

DATE ENTERED: ADMITTED FROM: Mohawk Jr. High Columbus Ohio

[ ] WAS NOT GRADUATED [ ] WAS GRADUATED DATE OF DIPLOMA:

NUMBER IN GRADUATING CLASS: 129 RANK IN CLASS: 95 AS COMPUTED: 5-3-72

POINT AVERAGE: 1.0370 AS COMPUTED: 2-16-72

PRINCIPAL

| SUBJECT | | |

Exhibit 1 E continued

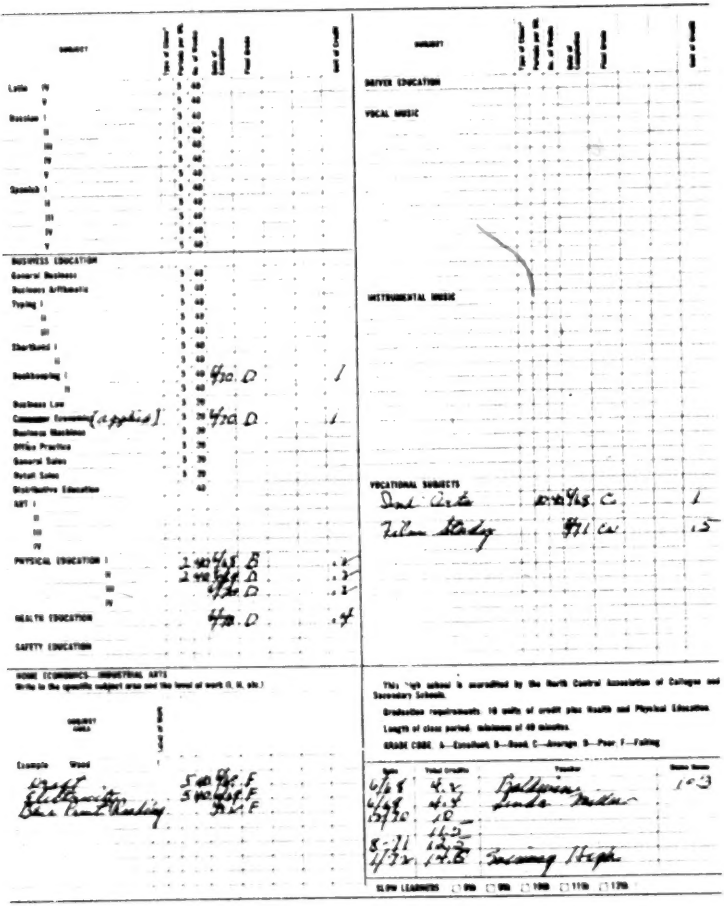


Exhibit 1 E continued

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS
2/22/11	Adult Day School	

NAME Lopez, Dwight (M) F
LAST FIRST MIDDLE SEX

HOME ROOM 310 310 102 LRC
GRADE LEVEL 7 8 9 10
PROMOTED FROM Douglas ELEMENTARY SCHOOL—DATE 6-11-65
GRADUATED FROM Mohawk JUNIOR HIGH SCHOOL—DATE 6-7-68
GRADUATED FROM SENIOR HIGH SCHOOL—DATE

CUMULATIVE PERSONAL RECORD
Columbus, Ohio, Public Schools
(To follow pupil)
Bdr 21

IN CASE OF EMERGENCY NOTIFY:
(If Parent Not Available)
NAME Miss Leonard Physician PHONE
ADDRESS 405 Clendenin PHONE Pa 4-5283
NAME Mrs Helen Lopez
ADDRESS 717 Hawk St Apt 4 444-1164
(Note: Do Not Call Pat Above)

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY
Mohawk	6-7-68	Aff

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	REASON*	REMARKS
6/68	Lees Sip Shop		

OUT-OF-SCHOOL ACTIVITIES

DATE	
1965	Boy Scouts

Exhibit 1 E continued

RESIDENTIAL DATA

SCHOOL		DATE ENTERED	DATE WITHDRAWN	REASON	RESIDENCE	PHONE	RESIDES WITH (RELATIONSHIP)	TUITION CODE	NON-RESIDENT STATE	NON-RESIDENT COUNTY
Douglas	Elem.	9/48		✓ By Reg. Pmt. ☐ By Pmt.	831 Franklin	223-2161	mother			
Mashawn	Junior	9-1-62	9-69	Moved (reported Unpaid)	"	453-2182	"			
	Junior									
	Junior									
	Junior									
	Senior									
	Senior									
	Senior									
	Senior									

PARENTAL DATA

	LAST	FIRST	MIDDLE	MARITAL STATUS	OCCUPATION	BUSINESS ADDRESS	BUSINESS PHONE	PARENT'S SCHOOL
FATHER	Lopez	Manuel		Sep.				
MOTHER (Maiden name)		Evan		Sep.	Motor Pool Co.	717 Rand St.	223-1144	
STEP-PARENT								
GUARDIAN								

ATTENDANCE DATA

SCHOOL	GRADE TERM	DATE ENTERED	TIMES TARDY	DAYS PRESENT	DAYS ABSENT	CAUSE OF ABSENCE	PARENT'S REASON FOR NON-COOPERATION
Douglas	6	9/48	20	148	32	1,2,3,5	Very little Cooperation
Mashawn Jr.	7	9-5-62	9	152½	25½	1,2,3	
"	8	9-7-66	12	141	41	1,2,3,5,7	
"	9	9-6-67	9	170	51		
" Jun.	10	9-6-68	3	47	135	2,5,7	
Central	11	9-70	6		34		5/25/71 - Refused for school

*Reasons or Absence Code: Use for 10 or more days—several numbers may apply

1. Illness — 2. Personal Illness — 3. Truancy — 4. Suspension
5. Conference — 6. Family Illness — 7. Out of Town — 8. Indigent

COUNSELING RECORD*

DATE	TYPE	COUNSELOR

*Type of Counseling Code:

1. Educational — 2. Personal
3. Vocational — 4. Other

Exhibit 1 E continued

Exhibit 1 E continued

TEST DATA

INTELLIGENCE

	DATE	GRADE LEVEL	NAME OF TEST	FORM	TYPE	CA	MA	IQ: VERB	IQ: PERF/NONVERB	TOTAL	% TILE
CUM.	10-15-64	6	Stanford Binet	S	Ind	13-3	11-8			89	
ASSESSMENT	10-66	8	WISC	A	GR	14-3	12-4			87	

ADDITIONAL TESTS RESULTS - COMMENTS

OTHER STANDARDIZED TESTS

	DATE	GRADE LEVEL	TYPE	NAME OF TEST	FORM	CITY WIDE: YES	CITY WIDE: NO	RESULTS		
CUM.	5-13-64	5	Ach.	Calif. Achieve	X		✓	Gr. Pl.	5.9	
	5-29-65	6	Ach.	Stanford Ach.	X	✓		Ar	6.1	
	4-5-66	6	Read.	Stanford Ach.	X	✓		Ar	5.4	
ASSESSMENT	11-66	8	Prog.	Self	W	✓		7.0	6.7	6.0
	12-66	8	Ach.	"	W	✓		6.3	6.4	7.4

PERSONALITY TRAITS

	6	7	8	9	10	11	12
INITIATIVE							
Merely conforms							
Seldom initiates		✓					
Frequently initiates	✓						
Self-reliant			X	X	✓		
Actively creative							
WORK HABITS							
Seldom produces					✓		
Works only under pressure		✓					
Needs occasional prodding	✓		X	X			
Consistently prepared							
Seeks additional work							
INFLUENCE AND LEADERSHIP							
Negative							
Co-operative but retiring							
Contributing in minor affairs	✓		X	X			
Contribution in important affairs							
Judgment requested - votes filled in							

	6	7	8	9	10	11	12
CONCERN FOR OTHERS							
Indifferent							
Self-centered							
Somewhat socially concerned	✓		X	X			
Generally concerned							
Deeply concerned							
RESPONSIBILITY					✓		
Irresponsible							
Somewhat dependable	✓	✓					
Usually dependable			X	X			
Conscientious							
Assumes much responsibility							
EMOTIONAL STABILITY							
Unresponsive							
Excitable							
Usually well-balanced	✓		X	X	✓		
Exceptionally stable							

	6	7	8	9	10	11	12
ATTENTION TO SCHOOL REGULATIONS							
Actively opposes regulations							
Indifferent					✓		
Usually cooperative	✓		X	X			
Follows regulations conscientiously							
An exemplary school citizen							
PERSONAL APPEARANCE AND DRESS							
Generally inappropriate	✓	✓			✓		
Tendency to follow extreme trends							
Usually tidy			X	X			
Neat and dressed in good taste							
Exceptionally attractive appearance							
ADDITIONAL COMMENTS							

ELEMENTARY SUMMARY

NAME Lopez, Dwight (LAST, FIRST, MIDDLE) (M) F From Douglas Elementary School

BIRTHPLACE Columbus (CITY OR COUNTY) Ohio (STATE) BIRTH DATE 7 (MO) 12 (DA) 51 (YR) VALIDATION B.C.

GENERAL ACADEMIC RATING

Excellent	
Above Average	
Average	✓
Below Average	
Poor	

SPECIAL APTITUDES

HEALTH DATA

Asthma		Heart	
Brain damage		Hernia	
Crippled		Kidney	
Diabetes		Rheumatic Fever	
Epilepsy		Speech	
Hearing		Vision	

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

SERIOUS ILLNESS—ACCIDENTS

	DATE		DATE

NOTE: The elementary school will provide test data, parental data and initial information on pages 2 and 3 as indicated.

ADDITIONAL INFORMATION (to be typed and signed)

ELEMENTARY

Attendance has been a problem. He is capable of doing the work well, but he will not do it readily. Home conditions has impeded progress. HH 6/65

SECONDARY

Attendance still a problem. He makes little effort to do the work but he is quite intelligent and seems to have much knowledge about many things. He is failing in Division (almost unbelievable) Mr. Jeffords 6-66

12-13-66 Suspended for fighting

IMMUNIZATIONS

TYPE		DATE
Smallpox		1958
D.P.T.	1.	1958
	2.	1958
	3.	1958
	4.	1959
Polio Salk Vacc.	1.	1960
	2.	1960
	3.	1962

Exhibit 1 E continued

EXHIBIT 2 A

Superintendent of Schools - Harold H. Eibling

McGUFFEY ELEMENTARY SCHOOL
2632 McGuffey Road, Columbus, Ohio 43211

March 3, 1971

Mrs. Martha Jane Adams
1666 E. 25th Ave.
Columbus, Ohio 43219

Dear Mrs. Adams:

This is official notification that your son/daughter, Betty Jane Crome has been temporarily suspended from McGuffey Jr. High. This suspension will continue until March 8, 1971 at 10:45 at which time you are to accompany him/her to school for a conference. During this time he/she is to remain at home during school.

Yours respectfully,

FRANK D. MASON
Principal

EXHIBIT 2 B

(Reconstructed For Clarity in Printing)

NAME Crume Betty Jane

Latest Photo

COLUMBUS PUBLIC SCHOOLS
Elementary and Junior High School
PERMANENT RECORD
(To be retained by the Junior High School)

Completed 8th Gr. ____ Entered ____ Jr. High
Completed 9th Gr. ____ Entered ____ Sr. High
Home Room ____ Present Address ____
Grade K 1 2 3 4 5 6 7 8 9 10 11 12 Diploma

RESIDENTIAL DATA

DATE ENTERED	FROM	RESIDENCE	PHONE	GRADES WITH WHICH ENTERED	Unit	DATE OF LEAVING	SIGNATURE OF PARENT OR GUARDIAN
		1506 Harbor					
		1506 Harbor					
		1506 Columbus					

PARENTAL DATA

	Last	First	Middle	MARITAL STATUS	OCCUPATION	BUSINESS ADDRESS	TELEPHONE	CHURCH AND PREFERENCE
FATHER								
MOTHER (Maiden name)	Crume	Martha	Jane					
STEP-FATHER								
GUARDIAN								

	INFORMATION REQUIREMENTS	DATE COMPLETED
Number		
Birth Certificate		
Polio	Salk 1st	
	2nd	
	3rd	

PLACE OF BIRTH Gastonia N.C.
DATE OF BIRTH

IN CASE OF EMERGENCY NOTIFY:

Exhibit 2 B continued

ELEMENTARY SCHOLARSHIP DATA

| SCHOOL | GRADE | TEACHER | | |

Exhibit 2 B continued

JUNIOR HIGH SCHOLARSHIP DATA

Subject	Yr.	Per Wk.	Type* of Class	Date	Gr.		Cr.
ENGLISH	7	5		6-71	F		
	8	5		6-72	C		
	9	5		6-73	D		1.0
Dramatics	9	2					
SOCIAL STUDIES	7			6-71	D		
Geography	7	5					
Ohio Hist. & Gov.	7	5					
American History	8	5		6-72	(F)	6-73 F	
MATHEMATICS	7	5		6-71	D		
	8	5		6-72	(F)		
	9	5		6-73	D		1.0
Algebra I	8	5					
Geometry	9	5					
SCIENCE							
Health Science	8	5		6-72			
General Science	9	5		6-73	D		1.0
LANGUAGE							
French I	8	5					
French II	9	5					
Spanish I	8	5					
Spanish II	9	5					
Latin I	8	5					
Latin II	9	5					
German I	9	5					
BUSINESS EDUCATION							
Typewriting	8	5					
General Business	8	5					
HOME EC.	7	4		6-71	C		
	8	2-4					
	9	10		6/73	C		1.0

Subject	Yr.	Per Wk.	Type* of Class	Date	Gr.		Cr.
IND. ARTS	7	4					
	8	2-4					
	9	10					
ART	7	2		6-71	C		
	8	2					
	9	2					
PHYSICAL EDUCATION	7	2		6-71	C		
	8	2		6-72	(F)		
	9	2		6-73	D		.2
MUSIC	7	2		6-71	C		
	8	2					
	9	2					
Glee Club	7						
	8						
	9						
Band	7						
	8						
	9						
Orchestra	7						
	8						
	9						
Instrumental							
Chorus							

DATE	GRADUATION DEFICIENCIES

JUNIOR HIGH ATTENDANCE DATA

GRADE	7	8	9	REMARKS
School Year	70-71	71-72		
Days Due	179	182		
Days Present	108	125		
Days Absent	71	57		
Times Tardy	4	7		

*Write in H for honors (able learners) or M for modified. Leave blank if regular. S for slow learners

Exhibit 2 B continued

TEST DATA

INDIVIDUAL INTELLIGENCE

DATE	GRADE	NAME OF TEST	C.A.	M.A.	I.Q.	ADMINISTERED BY PERSONNEL TESTING & RESEARCH DEPARTMENT
9-21-65	2	Kuhlmann-Anderson	7-7		94	

REMARKS: FOR ELEMENTARY USE

5/64 Kga Lee Clark R. Readiness 41 High A-1.

6/67 Betty is a darling girl - Very likable - does not understand to perfection - Quiet - Down

REMARKS: FOR JUNIOR HIGH USE

280

LEGAL NAME CROSS (LAST) BETTY (FIRST) JANE (MIDDLE) M (SEX) (F)

HOME ROOM 124 124 124

GRADE LEVEL 7 8 9

PROMOTED FROM Dunberry Park ELEMENTARY SCHOOL—DATE 6/70

GRADUATED FROM JUNIOR HIGH SCHOOL—DATE

GRADUATED FROM SENIOR HIGH SCHOOL—DATE

CUMULATIVE PERSONAL RECORD

Columbus, Ohio, Public Schools Sch. 21

(To follow pupil)

IN CASE OF EMERGENCY NOTIFY:
(If Parent Not Available)

NAME Mrs. [illegible]

ADDRESS 524 [illegible] PHONE 291-39[illegible]

NAME

ADDRESS PHONE

(Note: Use Pencil For Above)

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	REASON*	REMARKS

OUT-OF-SCHOOL ACTIVITIES

DATE

Exhibit 2 B continued

Exhibit 2 B continued

RESIDENTIAL DATA

SCHOOL	DATE ENTERED	DATE WITHDRAWN	REASON	RESIDENCE (STREET)	PHONE	RESIDES WITH RELATIONSHIP	TUITION (Cash)	NON-RESIDENT STATE	NON-RESIDENT COUNTY
Dunberry Park Elem. 6	4/69	6 70	X Reg. Prom. ☐ Sp. Prom.	1666 35th Ave	269-6990	mother			

PARENTAL DATA

	LAST	BASIC FIRST	MIDDLE	MARITAL STATUS	OCCUPATION	BUSINESS ADDRESS	BUSINESS PHONE	FOREIGN BORN
FATHER								
MOTHER (Mother name)	Crowe,	Martha Jane		Single	ADC			
STEP-PARENT								
GUARDIAN								

ATTENDANCE DATA

SCHOOL	GRADE LEVEL	DATE ENTERED	TIMES TARDY	DAYS PRESENT	DAYS ABSENT	NATURE OF ABSENCE*	COMMENTS REGARDING HOME COOPERATION
Dunberry Park	6	9/69	2	158	29½	1-3	
McDuffey	7	9-70	4	108	27		
E B /	8	9-71	7	126	57	1-3	

*Nature of Absence (Use for 10 or more days - several numbers may apply) 1. Illness 2. Confinement 3. Personal Illness 4. Family Illness 5. Truancy 6. Out of Town 7. Suspension 8. Indigent

SPECIAL APTITUDE TESTS

DATE	TYPE	COMMENTS

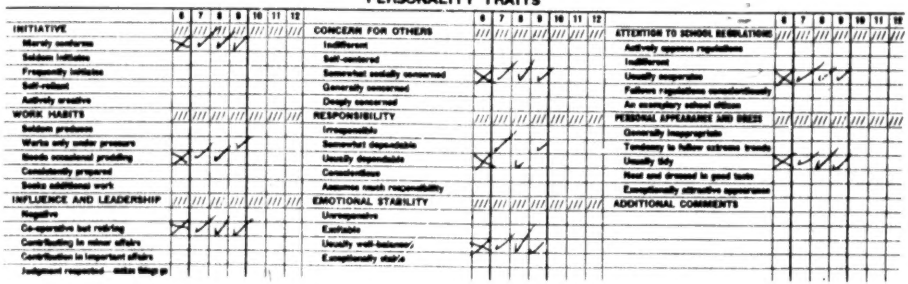
Exhibit 2 B continued

TEST DATA

INDIVIDUAL INTELLIGENCE

	DATE	GRADE LEVEL	NAME OF TEST		A	MA	IQ		ADMINISTERED BY PERSON TESTING
ELEM.									
SECONDARY									

PERSONALITY TRAITS



ADDITIONAL INFORMATION (to be dated and signed)

ELEMENTARY SUMMARY

LEGAL NAME CRANE (LAST) BETTY (FIRST) JANE (MIDDLE) M (F) (SEX) From Duxberry Park Elementary School

BIRTHPLACE Gastonia (CITY OR COUNTY) North Caro. (STATE) BIRTH DATE 2-19-58 (MO. DA. YR.) VALIDATION birth certificate

GENERAL ACADEMIC RATING

Excellent	
Above Average	
Average	X
Below Average	
Poor	

SERIOUS ILLNESS ACCIDENTS

	DATE		DATE

IMMUNIZATIONS

TYPE		DATE
Smallpox		5/63
D.P.T	1.	1/58
	2.	4/58
	3.	
	4.	6/63
Polio	1.	1/62
	2.	4/63
	3.	11/62

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

NOTE: The elementary school will provide test data, parental data and initial information on pages 2 and 3 as indicated.

ADDITIONAL INFORMATION (to be dated and signed)

ELEMENTARY

SECONDARY

Exhibit 2 B continued

EXHIBIT 3 A

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 10, 1971

Mr. & Mrs. William Young
3351 Southfield Drive, East
Columbus, Ohio

Dear Parents:

I have suspended Deborah from Marion-Franklin High School until Friday, March 19.

Deborah was extremely defiant, and disrespectful with the assistant Principal today.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

RICHARD KOLLMER
Assistant Principal

EXHIBIT 3 B

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 19, 1971

Mr. & Mrs. William H. Young, Jr.
3351 Southfield Drive, East
Columbus, Ohio

Dear Parents:

I have suspended Deborah Fox from Marion-Franklin High School until Monday, March 29, or until contacted by Mr. Robert Carter or his representative regarding your daughter's school placement.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

RICHARD KOLLMER
Assistant Principal

EXHIBIT 3 C

March 23, 1971

Mr. Richard Stinemetz, Prin.
South High School

Dear Mr. Stinemetz:

Approval is given for Deborah K. Fox, 3351 Southfield Drive, to enroll at South High School.

Miss Howard is working with Deborah and is very cooperative and interested in Deborah's improvement.

Any questions pertaining to this case should be referred to me or Miss Howard.

Sincerely,

H. M. WILLIAMS, *Director*
Pupil Personnel

EXHIBIT 3 D

(Reconstructed for Clarity in Printing)

COLUMBUS TESTING PROFILE

NAME FOX (LAST) DEBORAH (FIRST) (MIDDLE)

SCHOOL Beall Jr. High

Date of Birth 1-7-55

TEST DATA: Attach label below and plot score between the proper score intervals

STANINES

1 2 3 4 5 6 7 8 9

BELOW AVERAGE — AVERAGE — ABOVE AVERAGE

STANDARD SCORES

20 30 40 50 60 70 80

ACADEMIC APTITUDE

1 Comm 6 Co 6x Co

2

FOX DEBBIE CMM1010/70 042 NLANG

FOX DEBBIE CMM1010/70 042 LANG

FOX DEBBIE CMM1010/70 042 TOTAL

6

7

8

9

10

11

12

13

14

15

16

READING ACHIEVEMENT

1 Mar 1st Gr 2nd 4-45

2 Read 5th 5

3 Stan 4/67 Tot 4.45

FOX DEBBIE K CRT8 10/68 112 VOCAB

FOX DEBBIE K CRT8 10/68 112 COMPR

6

7

8

9

Exhibit 3 D continued

(Reconstructed for Clarity in Printing)

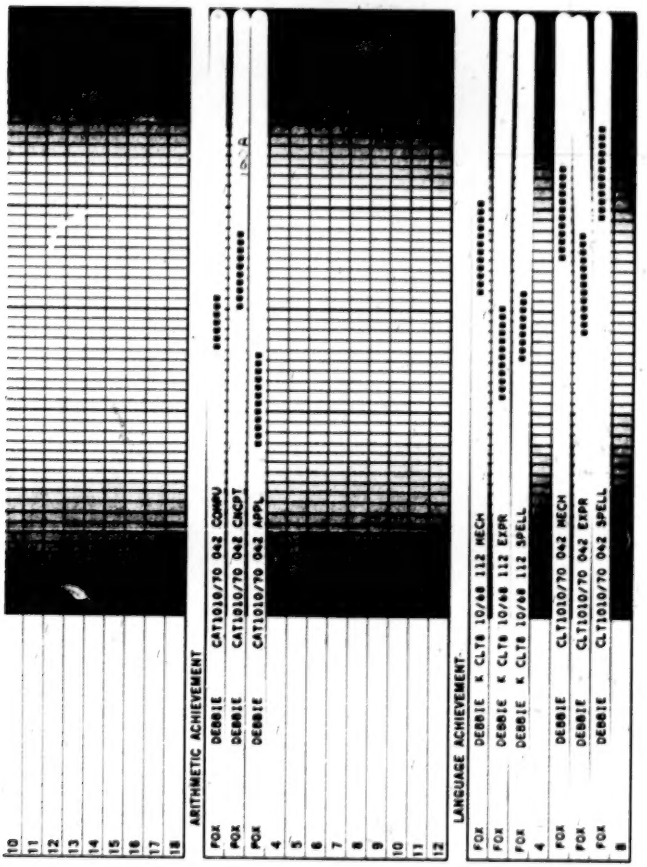


Exhibit 3 D continued

COLUMBUS TESTING PROFILE

TEST DATA: Attach label below and plot score between the proper score intervals

STANINES

1 2 3 4 5 6 7 8 9

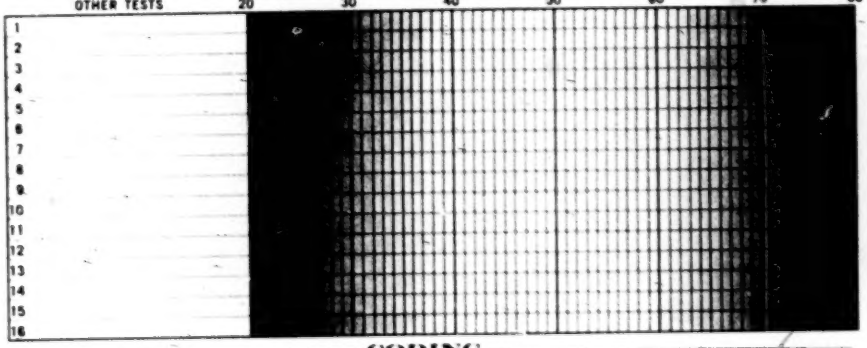
BELOW AVERAGE — AVERAGE — ABOVE AVERAGE

STANDARD SCORES

20 30 40 50 60 70 80

OTHER TESTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16



CODING

WRR Wellington Readiness	WR Wellington Reading	SA Stanford Arithmetic
LAR Lee Clark Readiness	SR Stanford Reading	CAT California Arithmetic Test
ARR American School Readiness	CRT California Reading Test	WA Wellington Arithmetic
KA Kuhlman Anderson Intelligence	KRA Harcourt Reason Intelligence	SAT Otis Survey Tests A
CTMM California Mental Maturity		CLT California Language Test
CTI California Intelligence		

Code to be followed by number to indicate grade at which test is given i.e. WRR Harcourt Reason given in the 6th grade

NAME FOX DEBORAH KAY M (F)
LAST FIRST MIDDLE

HOME ROOM 121 204 302 [illegible] 905
GRADE LEVEL 7 8 9 10 11 12
PROMOTED FROM Clarfield ELEMENTARY SCHOOL—DATE
GRADUATED FROM " JUNIOR HIGH SCHOOL—DATE 6-70
GRADUATED FROM Roosevelt SENIOR HIGH SCHOOL—DATE

CUMULATIVE PERSONAL RECORD

Columbus, Ohio, Public Schools

(To follow pupil)

Sub 21

IN CASE OF EMERGENCY NOTIFY:
(If Parent Not Available)

NAME Regina Jones
ADDRESS Alum Creek PHONE 878-24
NAME
ADDRESS PHONE
(Note: Use Pencil For Above)

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	HOURS/DAY	REMARKS

OUT-OF-SCHOOL ACTIVITIES

DATE	

Exhibit 3 D continued

RESIDENTIAL DATA

SCHOOL		DATE ENTERED	DATE WITHDRAWN	REASON	RESIDENCE	PHONE	RESIDES WITH (RELATIONSHIP)	TRANSFER (Date)	NON-RESIDENT STATE	NON-RESIDENT COUNTY
Clarfield	Elem.	9-66		☐ Reg. Prom. ☐ Sp. Prom.	1554 Orgewood Dr.	491-8310	B.F & Mother			
Berry	Junior	9-67			[illegible]					
Berry	Junior	1-6 70			" " "	"	"			
	Junior									
	Junior									
Marvin Trimble	Senior	9-70	5-24-71	Withdrawn						
Leach	Senior	9-30-71	9-71	Transfer						
East	Senior	9-9-71	10-14-71	To Brown Trail	94 N. 21st St					
Lovett	Senior	10-1-71	4-72	To Cypress, Rd	7551 Jacinto Ln.					

PARENTAL DATA

	LAST	NAME FIRST	MIDDLE	MARITAL STATUS	OCCUPATION	BUSINESS ADDRESS	BUSINESS PHONE	FOREIGN BORN
FATHER	Fox,	Alphonso	Edward	Div.				
MOTHER (Maiden name)		Delores M.	Richardson	M	Secretary - Student Aide		357-2121	
STEP-PARENT	Young,	William	Henry		Air Force			
GUARDIAN								

ATTENDANCE DATA

SCHOOL	GRADE LEVEL	DATE ENTERED	TIMES TARDY	DAYS PRESENT	DAYS ABSENT	NATURE OF ABSENCE*	COMMENTS REGARDING HOME COOPERATION
Clarfield	6	9-66	2	175	38		
Berry Jr.	7	9-67	8	177	4	1	
	8	9-68	19	148	34	1,7	
	9	1-69	10	82	22	13,7	
Marvin Trimble	10	9-70	24	91	37	5,7	
Leach H.S.	10	9-30-71	17	48	9		
East H.S.	11	9-9-71	2	34	12	2	
Lovett H.S.	12	10-1-71	—	150	32	1	

*Nature of Absence Code (use for 10 or more days—several numbers may apply)

1. Irregular 2. Personal Illness 3. Truancy 7. Suspension
5. Conference 6. Family Affairs 8. Out of Town 9. Indigent

COUNSELING RECORD*

DATE	TYPE	COUNSELOR

*Type of Counseling Code:

1. Educational 2. Personal
3. Vocational 4. Other

Exhibit 3 D continued

Exhibit 3 D continued

TEST DATA

INTELLIGENCE

	DATE	GRADE LEVEL	NAME OF TEST	FORM	TYPE	CA	MA	IQ VERB.	IQ NON VERB.	IQ TOTAL	% TILE
G.M.	9-66	6	Calif. M Mat	S	G					122	

OTHER STANDARDIZED TESTS

	DATE	GRADE LEVEL	TYPE	NAME OF TEST	FORM	CITY WIDE YES	CITY WIDE NO	RESULTS
G.M.	9-64	4	Arith	Arith Fundamentals	II	X		32 out of 64
	10-64	4	Read	Metropolitan Ach.	A	X		W.E. 3.4 Read 4.4
	6-67	6	Read	Stanford Ach.	X	X		6.0

ADDITIONAL TESTS RESULTS - COMMENTS

3-15-71 Suspended for Administration

PERSONALITY TRAITS

	6	7	8	9	10	11	12
INITIATIVE							
Merely conforms							
Initiates initiates							
Frequently initiates							
Self-reliant	✓	✓					✓
Actively creative							
WORK HABITS							
Solves problems							
Works only under pressure							
Needs emotional prodding							
Consistently prepared	✓	✓	✓	✓			✓
Seeks additional work							
INFLUENCE AND LEADERSHIP							
Negative							
Co-operative but retiring							
Contributing in minor affairs							
Contributes in important affairs	✓	✓	✓				✓
Inclined repeated - takes things p							

	6	7	8	9	10	11	12
CONCERN FOR OTHERS							
Indifferent							
Self-centered							
Some-what socially concerned			✓				
Generally concerned		✓					✓
Deeply concerned							
RESPONSIBILITY							
Irresponsible							
Somewhat dependable			✓				
Usually dependable	✓						
Conscientious			✓				✓
Assumes much responsibility							
EMOTIONAL STABILITY							
Unresponsive							
Excitable		✓	✓				
Usually well-balanced							✓
Exceptionally stable							
unstable at times	✓	✓					

	6	7	8	9	10	11	12
ATTENTION TO SCHOOL REGULATIONS							
Actively opposes regulations							
Indifferent			✓				
Usually cooperative	✓				✓		✓
Follows regulations conscientiously							
An exemplary school citizen							
PERSONAL APPEARANCE AND DRESS							
Generally inappropriate							
Tendency to follow extreme trends							
Usually tidy							
Neat and dressed in good taste		✓	✓				✓
Exceptionally attractive appearance							
ADDITIONAL COMMENTS							

Extremely immature in many ways. Lacks the ability to concentrate on any task for any length of time. Has difficulty "staying" in the seat.

ELEMENTARY SUMMARY

NAME FOX (LAST) DEBORAH (FIRST) KAY (MIDDLE) M (F) (SEX) From CLARFIELD Elementary School

BIRTHPLACE COLUMBUS, OHIO (CITY OR COUNTY) (STATE) BIRTH DATE 1-7-55 (MO. DA. YR.) VALIDATION Birth Cert.

GENERAL ACADEMIC RATING

Excellent	
Above Average	✓
Average	
Below Average	
Poor	

SPECIAL APTITUDES

HEALTH DATA

Asthma		Heart	
Brain damage		Hernia	
Crippled		Kidney	
Diabetes		Rheumatic Fever	
Epilepsy		Speech	
Hearing		Vision	

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

Music Festival	
Patrol	

SERIOUS ILLNESS—ACCIDENTS

	DATE		DATE

NOTE: The elementary school will provide test data, parental data and initial information on pages 2 and 3 as indicated.

ADDITIONAL INFORMATION (to be dated and signed)

ELEMENTARY

SECONDARY

IMMUNIZATIONS

TYPE		DATE
Smallpox		1961
D.P.T.	1.	
	2.	
	3.	1960
	B.	1961
Polio	1.	
	2.	
	3.	1957

Exhibit 3 D continued

Exhibit 3 D continued

COLUMBUS PUBLIC SCHOOLS

Sch 25

ACADEMIC RECORD

South SENIOR HIGH SCHOOL
(To be Retained)

12-305

NAME Fay Deborah Kay HOME ROOM 12-213

ADDRESS 3351 Southfield Dr East PHONE 491-5153

RESIDES WITH Wm & Deloras Young RELATIONSHIP S/father & mother

DATE OF BIRTH 1-7-55 DATE ENTERED 12-1-71

	DATE	REASON
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

PHOTO

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME

ADDRESS

PHONE

Exhibit 3 D continued

South HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME: Fox (last) Deborah (first) Kay (middle) ADDRESS: 3351 Southfield Dr

SEX: F (M or F) DATE OF BIRTH: 1 (month) 2 (day) 55 (year) PLACE OF BIRTH: Colo (city) Ohio (State)

PARENT OR GUARDIAN: Wm & Delores Young

DATE ENTERED: Dec 1, 1971 ADMITTED FROM: East H.S.

Is supposed to grad. June 1972 Colo (city) Ohio (State)

☐ WAS NOT GRADUATED ☐ WAS GRADUATED DATE OF DIPLOMA:

NUMBER IN GRADUATING CLASS: 480 RANK IN CLASS: 222 AS COMPUTED: 1/72 (DATE)

POINT AVERAGE: 2.087 AS COMPUTED: 1/72 (DATE) L P. Fassler PRINCIPAL

SUBJECT	Years of Class*	Periods per Wk.	No. of Weeks	Mid-Semester	Final Grade	Unit of Credit
LANGUAGE ARTS						
English I (9)		5	40	6 70	B	1.
II (10)	H	5	40	6 71	B	1.
III (11)		5	40			
English Literature & Composition		5	40			
Comp. Literature & Composition		5	40			
Business English		5	40			
Dramatics (9)		2	40			
Journalism		5	40			
Speech I (Public, Radio and Television)		5	40			
Speech II (Dramatics)		5	40			
SOCIAL STUDIES						
World History		5	40	H 6911	B	1.0
American History		5	40	552	B	1.
Principles of Democracy		5	40			
Current History		5	20			
		5	20			
Geography		5	20			

* Write H for honors table learned or M for modified. Leave blank if regular

SUBJECT	Years of Class*	Periods per Wk.	No. of Weeks	Mid-Semester	Final Grade	Unit of Credit
MATHEMATICS						
General Mathematics		5	40			
Shop Mathematics		5	40			
Algebra I (8)		5	40	6 69	C	(1)
Algebra II		5	40	6 71	D	1.
Geometry (Plain & Solid)		5	40	6 70	D	1.
Trigonometry		5	20			
Analytical Geometry		5	20			
Advanced Mathematics V		5	40			
Senior Review Arithmetic		2	40			
SCIENCE						
General Science I		5	40	6 70	C	1.
Physical Science II		5	40			
Biology I	H	5	40	6 71	D	1.
Biology II		7	40			
Chemistry		7	40			
Physics		7	40			
FOREIGN LANGUAGE						
French I (8 12)		5	40	6 69	C	(1)
II		5	40	6 70	D	1.
III		5	40	6 71	C	1.
IV		5	40			
V		5	40			
German I		5	40			
II		5	40			
III		5	40			
IV		5	40			
V		5	40			
Latin I		5	40			
II		5	40			
III		5	40			

Exhibit 3 D continued

SUBJECT	Years of Study	Periods per Wk.	No. of Weeks	Daily Attendance	Final Grade	Unit of Credit
Latin IV	5	40				
V	5	40				
Russian I	5	40				
II	5	40				
III	5	40				
IV	5	40				
V	5	40				
Spanish I	5	40				
II	5	40				
III	5	40				
IV	5	40				
V	5	40				
BUSINESS EDUCATION						
General Business	5	40				
Business Arithmetic	5	40				
Typing I	5	40	5-10	A		.5
II	5	40				
III	5	40				
Shorthand I	5	40				
II	5	40				
Bookkeeping I	5	40				
II	5	40				
Business Law	5	20				
Consumer Economics	5	20				
Business Machines	5	20				
Office Practice	5	20				
General Sales	5	20				
Retail Sales	5	20				
Distributive Education		40				
ART I						
II						
III						
IV						
PHYSICAL EDUCATION I	2	200	36	B		.5
II	"	"	4	U	C	.5
III						
IV						
HEALTH EDUCATION						
SAFETY EDUCATION						

SUBJECT	Years of Study	Periods per Wk.	No. of Weeks	Daily Attendance	Final Grade	Unit of Credit
DRIVER EDUCATION				5/11	B	.5
VOCAL MUSIC						
INSTRUMENTAL MUSIC						
VOCATIONAL SUBJECTS						

HOME ECONOMICS—INDUSTRIAL ARTS
Write in the specific subject area and the level of work (I, II, etc.)

SUBJECT AREA	LEVEL OF WORK					
Example Wood	I					
Clothing		5	40	36	D	.5

This high school is accredited by the North Central Association of Colleges and Secondary Schools.

Graduation requirements: 19 units of credit plus Health and Physical Education

Length of class period: minimum of 40 minutes

GRADE CODE: A—Excellent, B—Good, C—Average D—Poor, F—Failing

Date	Total Credits	Teacher	Home Room
8/71	11.5		

SLOW LEARNERS ☐ 8th ☐ 9th ☐ 10th ☐ 11th ☐ 12th

EXHIBIT 4 A

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 16, 1971

Mrs. Katherine Cooper
1576 Koebel Road
Columbus, Ohio

Dear Mrs. Cooper:

I have suspended Susan, your daughter, from Marion-Franklin High School until Thursday, March 25. I will reserve 11:00 a.m. on this day for a conference with you and your daughter.

Susan was involved in the disturbance at school on Monday, March 15 at which time she showed a lack of respect for the principal.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

OSCAR R. GILL
Assistant Principal

EXHIBIT 4 B

COLUMBUS PUBLIC SCHOOLS
ACADEMIC RECORD

Sch. #

Marion Franklin SENIOR HIGH SCHOOL
(To be Retained)

69-70 10-B
70-71 10-B
71-72 10-B

NAME [illegible] LAST [illegible] FIRST [illegible] MIDDLE HOME ROOM

ADDRESS 1576 Parkwood St PHONE 491-2005
447-9485

RESIDES WITH [illegible] RELATIONSHIP [illegible]

	DATE	REASON
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS
10-27-70	Mrs. L. Wilson Upward Bound	
7-29-71	"	
11-8-71	Ann U	
"	Kent State U	
1-4-72	Sent to Nashville [illegible]	
1-26-72	Bowling Green State U	
7-10-72	Mrs Wilson Upward Bound	

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME

ADDRESS

PHONE

Exhibit 4 B continued

[redacted] HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME: [redacted] ADDRESS [redacted]

SEX: F DATE OF BIRTH: [redacted] PLACE OF BIRTH: [redacted]

PARENT OR GUARDIAN: [redacted]

DATE ENTERED: [redacted] ADMITTED FROM: [redacted]

☐ WAS NOT GRADUATED ☑ WAS GRADUATED DATE OF DIPLOMA: 6-11-72

NUMBER IN GRADUATING CLASS: 328 RANK IN CLASS: 183 AS COMPUTED: 1.72 (DATE)

POINT AVERAGE 1.933 AS COMPUTED: 1.72 (DATE) Philip L. Fulton PRINCIPAL

SUBJECT	Grade Level	Credit Earned	Semester Grades						Final Grade
LANGUAGE ARTS									
English I (9)		5	40	[redacted]	C				/
II (10)		5	40	[redacted]	C				/
III (11)		5	40	[redacted]	C				/
English Literature & Composition		5	40	[redacted]	C				/
Cont. Literature & Composition		5	40						
Business English		5	40						
Dramatics (9)		2	40						
Journalism		5	40						
Speech I (Public Skills and Television)		5	40						
Speech II (Dramatics)		5	40						
SOCIAL STUDIES									
World History		5	40	[redacted]	C				/
American History		5	40	[redacted]	C				/
Principles of Democracy		5	40	[redacted]	C				/
Current History		5	20						
		5	20						
Geography		5	20						
		5	20						

SUBJECT	Grade Level	Credit Earned	Semester Grades						Final Grade
MATHEMATICS									
General Mathematics		5	40	[redacted]	C				/
Shop Mathematics		5	40						
Algebra I		5	40	[redacted]	D				/
Algebra II		5	40						
Geometry (Plane & Solid)		5	40						
Trigonometry		5	20						
Analytical Geometry		5	20						
Advanced Mathematics V		5	40						
Senior Review Arithmetic		2	40						
SCIENCE									
General Science I		5	40						
Physical Science II		5	40	[redacted]	C				/
Biology I		5	40	[redacted]	C				/
Biology II		7	40						
Chemistry		7	40						
Physics		7	40						
FOREIGN LANGUAGE									
French I		5	40						
II		5	40						
III		5	40						
IV		5	40						
V		5	40						
German I		5	40						
II		5	40						
III		5	40						
IV		5	40						
V		5	40						
Latin I		5	40						
II		5	40						
III		5	40						

Exhibit 4 B continued

SUBJECT	Year in School	Periods per Week	No. of Weeks	Date Studied	Final Grade			Credit Earned
Latin IV								
V								
Russian I								
II								
III								
IV								
V								
Spanish I	9	40		6-67	C			1
II	10	40		6-70	B			1
III	11	40		6-71	C			1
IV								
V								
BUSINESS EDUCATION								
General Business								
Business Arithmetic								
Typing I	10	40		6-71	D			.5
II								
III								
Shorthand I								
II								
Bookkeeping I								
II								
Business Law								
Consumer Economics								
Business Machines								
Office Practice								
General Sales								
Retail Sales								
Distributive Education								
ART I				6-67	B			.5
II (Voc.)	10	40		6-70	B			.5
III								
IV								
PHYSICAL EDUCATION I				6-67	B			.25
II				6-70	C			.25
III				6-71	C			.25
IV								
HEALTH EDUCATION				6-71	C			.4
SAFETY EDUCATION								

SUBJECT	Year in School	Periods per Week	No. of Weeks	Date Studied	Final Grade			Credit Earned
DRIVER EDUCATION	10	5	6	6-71	C			.5
VOCAL MUSIC								
INSTRUMENTAL MUSIC								
VOCATIONAL SUBJECTS								

HOME ECONOMICS—INDUSTRIAL ARTS
Write in the specific subject area and the level of work (I, II, etc.)

SUBJECT AREA	Year in School								
Example: Wood	1								
Home Economics	9	40	36	6-67	D			1	

This high school is accredited by the North Central Association of Colleges and Secondary Schools.

Graduation requirements: 16 units of credit plus Health and Physical Education.

Length of class period: minimum of 40 minutes.

GRADE CODE: A—Excellent; B—Good; C—Average; D—Poor; F—Failing

Date	Total Credits	Teacher	Home Room
6-67	4.75	[illegible]	
6-68	9	D. Allen	110-B
6-69	13.55	G. Hopkins	114-B
6-70	18.05	Fletcher	110-B

SLOW LEARNERS ☐ 8th ☐ 9th ☐ 10 Spc ☐ 11th ☐ 12th

EXHIBIT 4 B continued

March 16, 1971

Mrs. Katherine Cooper
1576 Koebel Road
Columbus, Ohio

Dear Mrs. Cooper:

I have suspended Susan, your daughter, from Marion-Franklin High School until Thursday, March 25. I will reserve 11:00 a.m .on this day for a conference with you and your daughter.

Susan was involved in the disturbance at school on Monday, March 15 at which time she showed a lack of respect for the principal.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

Oscar R. Gill
Assistant Principal

CC: Mr. C. L. Dumaree
Mr. H. M. Williams
Mr. Philip Fulton
Mr. Richard Kollmer

CUMULATIVE PERSONAL RECORD

Columbus, Ohio, Public Schools Bob 21

(To follow pupil)

NAME COOPER, SUSAN CORY M FX
(LAST) (FIRST) (MIDDLE) (SEX)

HOME ROOM #10 105 A-N 101 102 102 106

GRADE LEVEL 6 7 8 9 10 11 12

PROMOTED FROM Eastgate ELEMENTARY SCHOOL—DATE 6/10/66

GRADUATED FROM JUNIOR HIGH SCHOOL—DATE

GRADUATED FROM Marion-Franklin SENIOR HIGH SCHOOL—DATE 6-11-72

IN CASE OF EMERGENCY NOTIFY:
(If Parent Not Available)
NAME [illegible]
ADDRESS [illegible] PHONE 491-1162
NAME [illegible]
ADDRESS [illegible] PHONE 491 [illegible]
(Name Use Pencil For Above)

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION
M-F	71-72	Homecoming Queen

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY
Eastgate	1966	School Patrol / Sub Instrumental Music
M-F	3-70	Trip To Spain
		Lunchroom - Modern Dance & Ski Club
		CAA
		VP Modern Dance
M-F	71-72	Modern Dance - Pres Cheerleader Manager

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	REASON	REMARKS
71-72	Bureau of Motor Vehicles		

OUT-OF-SCHOOL ACTIVITIES

DATE	

Exhibit 4 B continued

Exhibit 4 B continued

RESIDENTIAL DATA

From		Date Entered	Date Withdrawn	Reason: Entry From	Reason: To From	Residence	Phone	Resides With	Tuition Grade	Non-Resident: State	Non-Resident: County
Eastgate	Elem.	9/5									
Hampton	Junior	9/7	6/7	Trans.	Transfer	2432 Mc... Rich	213-5[illegible]	Mother			
Lamar	Junior	10/66									
Barry	Junior	9-6-67				1427 Venice Dr	821-6[illegible]				
Everett	Junior		Aug 68	(Washington Irving Middle)		1427 Venice Dr	821-6[illegible]	Father			
	Senior	9-69				1526 Kimball #P	821-1[illegible]				
	Senior										
	Senior										
	Senior										

PARENTAL DATA

	Mr. Mrs. Miss	Name: First	Middle	Name: Last	Maiden Name	Occupation	Business Address	Business Phone	Business Zone
FATHER	Mr	COOPER, BERNARD	&			[illegible]	[illegible]		
MOTHER (Maiden name)	Mrs	MAR (KELLY)				[illegible]	[illegible]	247	[illegible]
STEP-PARENT									
GUARDIAN									

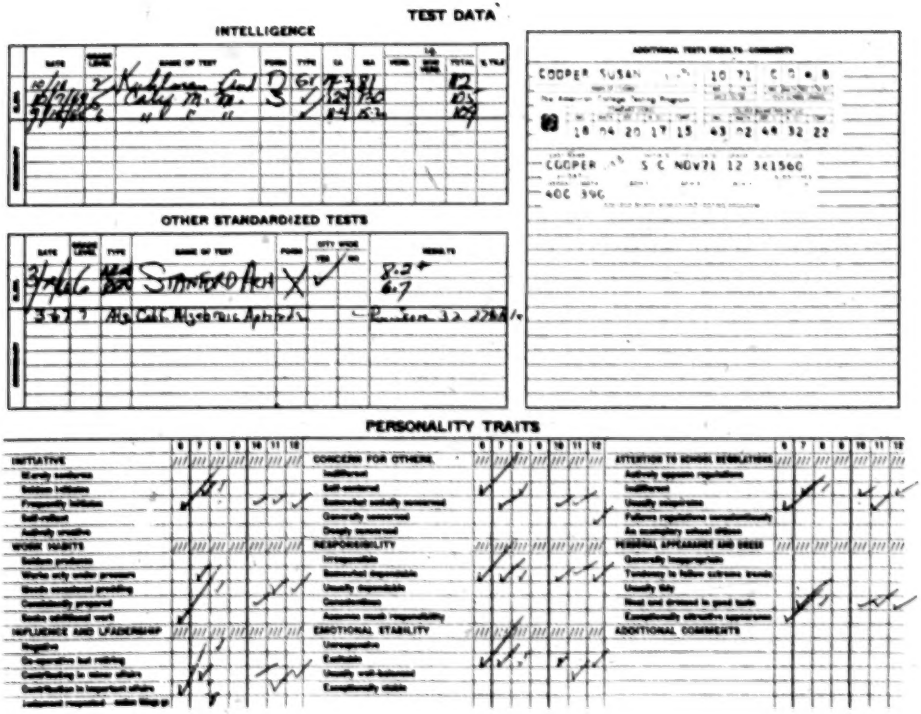
ATTENDANCE DATA

School	Grade	Date Entered	Times Tardy	Days Absent	Date Withdrawn	Nature of Absence	Comments Regarding Home Conditions
Eastgate	6	9/7	3	5			
		3/24	3	9	6/5		
				16			
Hampton Jr.	7	9 9 66	0	12	9		
Lamar Jr.	9	10 3 68	11	159	3		
Barry Jr.	8	9-6-67	52	131	73	3.7	
Everett Jr. High	10	9 1 68	44	132	74		
Marion Franklin Jr. H.	11	9-2-70	92	145	34		
	12	9-7-71	66	158	34	1	

COUNSELING RECORD*

Date	Type	Counselor

Exhibit 4 B continued



TEST DATA

INTELLIGENCE

DATE	GRADE	NAME OF TEST	FORM	TYPE	IQ	MA	VERB	QUAN	TOTAL	%TILE
10/71	2	Kuhlmann Cad	D	Gr	73	81			12	
6/1973	4	Cady M.A.	S	✓	128	150			105	
6/1974	5	" C "		✓	134	154			109	

OTHER STANDARDIZED TESTS

DATE	GRADE	TYPE	NAME OF TEST	FORM	CITY WIDE YES	CITY WIDE NO	RESULTS
3/1974	5	MAT 6 BAT	Stanford Ach	X	✓		8.2+ 6.7
3/74	7	Ach Calif Mach Ach Aptitude					Reading 3.2 27th %ile

ADDITIONAL TESTS RESULTS / COMMENTS

COOPER SUSAN 10 71 C 9 + 8

The American College Testing Program

SS 18 04 20 17 15 43 02 44 32 22

COOPER S C NOV71 12 3C1560

40C 396

PERSONALITY TRAITS

	6	7	8	9	10	11	12
INITIATIVE							
Rarely conforms							
Seldom initiates							
Frequently follows							
Self-reliant							
Actively creative							
WORK HABITS							
Seldom prepares							
Works only under pressure							
Needs considered prodding							
Consistently prepared							
Seeks additional work							
INFLUENCE AND LEADERSHIP							
Negative							
Co-operative but retiring							
Contributing in minor efforts							
Contributes in important efforts							
Leadership requested - understood							

CONCERN FOR OTHERS	6	7	8	9	10	11	12
Indifferent							
Self-centered							
Somewhat socially concerned							
Generally concerned							
Deeply concerned							
RESPONSIBILITY							
Irresponsible							
Somewhat dependable							
Usually dependable							
Conscientious							
Assumes much responsibility							
EMOTIONAL STABILITY							
Unresponsive							
Excitable							
Usually well-balanced							
Exceptionally stable							

ATTENTION TO SCHOOL REGULATIONS	6	7	8	9	10	11	12
Actively opposes regulations							
Indifferent							
Usually cooperates							
Follows regulations unconditionally							
An exemplary school citizen							
PERSONAL APPEARANCE AND DRESS							
Generally inappropriate							
Tendency to follow extreme trends							
Usually tidy							
Neat and dressed in good taste							
Exceptionally attractive appearance							
ADDITIONAL COMMENTS							

ELEMENTARY SUMMARY

NAME COOPER, SUSAN (Last, First, Middle) M F (Sex) From EASTGATE Elementary School

BIRTHPLACE Chillicothe (City or County), Ohio (State) BIRTH DATE 5-30-54 (Mo. Da. Yr.) VALIDATION B.V.S

GENERAL ACADEMIC RATING

Excellent	
Above Average	✓
Average	
Below Average	
Poor	

SPECIAL APTITUDES

Instrumental Music

HEALTH DATA

Asthma		Heart	
Brain damage		Hernia	
Crippled		Kidney	
Diabetes		Rheumatic Fever	
Epilepsy		Speech	
Hearing		Vision	

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

School Patrol (Sr.)

SERIOUS ILLNESS—ACCIDENTS

	DATE		DATE

NOTE: The elementary school will provide test data, parental data and initial information on pages 2 and 3 as indicated.

ADDITIONAL INFORMATION (to be dated and signed)

ELEMENTARY

SECONDARY

IMMUNIZATIONS

TYPE		DATE
Smallpox		7/59
D.P.T.	1.	
	2.	
T.S.C.	3.	1954
	B.	
Polio	1.	✓
	2.	
	3.	✓
4		1954

Exhibit 4 B continued

EXHIBIT 5 B

COLUMBUS PUBLIC SCHOOLS
ACADEMIC RECORD

Bob 29
REVISED: JUNE 1968

Eastmoor SENIOR HIGH SCHOOL
(To be Retained)

NAME Smith (LAST) Carl (FIRST) Matthew (MIDDLE) HOME ROOM

ADDRESS 2295 Vadis Strut PHONE 279 9166

RESIDES WITH James - Vida Smith RELATIONSHIP P

DATE OF BIRTH _____ DATE ENTERED _____

	DATE	REASON
WITHDRAWN	3/31/71	Overage
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

PHOTO

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME _____

ADDRESS _____

PHONE _____

Exhibit 5 B continued

Evening HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME: Smith (Last) Carl (First) Matthew (Middle) ADDRESS:

SEX: M (M or F) DATE OF BIRTH: 11 (Month) - 17 (Day) - 52 (Year) PLACE OF BIRTH: Columbus (City) Ohio (State)

PARENT OR GUARDIAN:

DATE ENTERED: April 1, 1970 ADMITTED FROM: West High

☐ WAS NOT GRADUATED ☒ WAS GRADUATED DATE OF DIPLOMA: 6 - 14 - 72 (Month - Day - Year)

NUMBER IN GRADUATING CLASS: 109 RANK IN CLASS: 82 AS COMPUTED: 5 - 3 - 72 (Date)

POINT AVERAGE: 1.0258 AS COMPUTED: 2 - 16 - 71 (Date) J. M. Damron PRINCIPAL

SUBJECT	Term of School (Sem. or Qtr.)	Periods per Week	No. of Weeks	Mid-Quarter	Final Grade			Unit of Credit
LANGUAGE ARTS								
English I (9)	S	40	6-68	D				1
II (10)	S	40	6-69	F	6-70	F	D	
III Black Lit.	S	40	6-71	B	9-71	C	C+	.5
English Literature & Composition	S	40	9-72	B	6-72	C+	B-	
Cont. Literature & Composition	S	40						
Business English	S	40						
English III			9-72	C	6-72	C	B-	
Dramatics I	2	40						
English (10) II			9-72	C	6-72	D	B-	
Journalism	S	40						
Speech I (Public, Radio and Television)	S	40						
Speech II (Dramatics)	S	40						
SOCIAL STUDIES								
World History	S	40	6-68	F	9-69	D		1
American History	S	40	6-70	D				
Principles of Democracy	S	40	9-71	C	6-71	C		1.0
Current History	S	20						
	S	20						
Geography	S	20	9-71	C	6-72	D	C-	.5
	S	20						

*Grade is for Season's table tournament or is for unsatisfied. Leave blank if regular

SUBJECT	Term of School (Sem. or Qtr.)	Periods per Week	No. of Weeks	Mid-Quarter	Final Grade			Unit of Credit
MATHEMATICS								
General Mathematics	S	40						
Shop Mathematics	S	40						
Algebra I	S	40	6-68	D				1
Algebra II	S	40						
Geometry (Plain & Solid)	S	20						
Trigonometry	S	20						
Analytical Geometry	S	20						
Advanced Mathematics V	S	40						
Senior Review Arithmetic	2	40						
Math II	S	40	6-70	C				1
SCIENCE								
General Science I	S	40	6-68	D				1
Physical Science II	S	40	6-70	C				1
Biology I	S	40						
Biology II	2	40						
Chemistry	2	40						
Physics	2	40						
FOREIGN LANGUAGE								
French I	S	40						
II	S	40						
III	S	40						
IV	S	40						
V	S	40						
German I	S	40						
II	S	40						
III	S	40						
IV	S	40						
V	S	40						
Latin I	S	40						
II	S	40						
III	S	40						

Exhibit 5 B continued

SUBJECT	Years of Classes Periods per Wk. No. of Weeks	Mark	Final Grade	Unit of Credit
Latin IV	5 40			
V	5 40			
Russian I	5 40			
II	5 40			
III	5 40			
IV	5 40			
V	5 40			
Spanish I	5 40	68	D	1
II	5 40	69	D	1
III	5 40			
IV	5 40			
V	5 40			
BUSINESS EDUCATION				
General Business	5 40			
Business Arithmetic	5 40			
Typing I	5 40	68	F	
II	5 40	69	C	.5
III	5 40			
Shorthand I	5 40			
II	5 40			
Bookkeeping I	5 40			
II	5 40			
Business Law	5 20			
Consumer Economics	5 20			
Business Machines	5 20			
Office Practice	5 20			
General Sales	5 20	6 70	C	1
Retail Sales	5 20			
Distributive Education	40			
ART I				
II				
III				
IV				
PHYSICAL EDUCATION I		68	B	.2
II		69	E	
III		6 70	D	.2
IV		3 71	C	.2
HEALTH EDUCATION Health		6 70	F	1/2
		11 72	C	1/2
SAFETY EDUCATION				

SUBJECT	Years of Classes Periods per Wk. No. of Weeks	Mark	Final Grade	Unit of Credit
DRIVER EDUCATION				
VOCAL MUSIC				
INSTRUMENTAL MUSIC				
VOCATIONAL SUBJECTS				

HOME ECONOMICS—INDUSTRIAL ARTS
Write in the specific subject area and the level of work (I, II, etc.)

SUBJECT AREA	Unit of Credit
Example: Wood	1
10 Drafting	5
Electricity	5

68	F	
69	E	

This high school is accredited by the North Central Association of Colleges and Secondary Schools.

Graduation requirements: 18 units of credit plus Health and Physical Education.

Length of class period: minimum of 40 minutes.

GRADE CODE: A—Excellent, B—Good, C—Average, D—Poor, F—Failing

Date	Total Credits	Teacher	Home Room
6/70	4.7		
5/20	10.7		
3/21	12.6		
6/72	15.0	Ed Wright	

SLOW LEARNERS ☐ 9th ☐ 9th ☐ 10th ☐ 11th ☐ 12th

Exhibit 5 B continued

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS
10-29-71	Evening High School	

NAME SMITH, CARL MATTHEW (M) F
LAST FIRST MIDDLE SEX

CUMULATIVE PERSONAL RECORD
Columbus, Ohio, Public Schools Sch 21
(To follow pupil)

HOME ROOM 12nd 234 123
GRADE LEVEL 7 10 11
PROMOTED FROM WEST MOUND STREET ELEMENTARY SCHOOL—DATE 6-65
GRADUATED FROM JUNIOR HIGH SCHOOL—DATE
GRADUATED FROM SENIOR HIGH SCHOOL—DATE

IN CASE OF EMERGENCY NOTIFY:
(If Parent Not Available)
NAME
ADDRESS PHONE
NAME
ADDRESS PHONE
(Note: Use Pencil For Above)

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION
Central	6-70	None

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY
Central	6-70	None

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	REASON*	REMARKS

*"A" Helps support family "B" Spending money "C" Parents' desire "D" Clothes school "E" Wants personal satisfaction "F" Other

OUT-OF-SCHOOL ACTIVITIES

DATE	

Exhibit 5 B continued

Exhibit 5 B continued

RESIDENTIAL DATA

SCHOOL		DATE ENTERED	DATE WITHDRAWN	REASON	RESIDENCE	PHONE	RESIDED WITH (RELATIONSHIP)	TUITION (Check)	NON-RESIDENT STATE	NON-RESIDENT COUNTY
WEST MOUND STREET	Elem.	3/64	6/65	☑ Reg. Prom. ☐ Sp. Prom.	2295 Vadis	279-9166	parents			
HILLTONIA	Junior	9-8-65								
	Junior									
	Junior									
	Junior									
	Senior									
Central	Senior	70								
	Senior									
	Senior									

PARENTAL DATA

	LAST	NAME FIRST	MIDDLE	MARITAL STATUS	OCCUPATION	BUSINESS ADDRESS	BUSINESS PHONE	FOREIGN BORN
FATHER	Smith,	James	B.	m	inspector	City		
MOTHER (Maiden name)	Saunders,	Vada		m	supervisor	JDC		
STEP-PARENT								
GUARDIAN								

ATTENDANCE DATA

SCHOOL	GRADE LEVEL	DATE ENTERED	TIMES TARDY	DAYS PRESENT	DAYS ABSENT	NATURE OF ABSENCE*	COMMENTS REGARDING HOME COOPERATION
WEST MOUND STREET	6	3/66	3	152	30		
HILLTONIA	7	9-8-65	3	167½	15½		
HILLTONIA	8	9-7-66	0	173	9		
"	9	9-6-67	5	157.5	25.5		
Tilest	10	9-68	2	60	24		
Tilest	10	1-69	6	26½	6½	S 28	
West	11	9-69	18	70½	19½		
Central	11	9-70	2	108	13		
Central	12	9-70					3/3/71 Change

*Nature of Absence Code (use for 10 or more days—several numbers may apply)

1. Irregular 2. Personal Illness 3. Truancy 7. Suspension
5. Conference 4. Family Illness 5. Out of Town 8. Indigent

COUNSELING RECORD*

DATE	TYPE	COUNSELOR

Exhibit 5 B continued

TEST DATA

INTELLIGENCE

	DATE	GRADE LEVEL	NAME OF TEST	FORM	TYPE	CA	MA	I.Q. VERB.	I.Q. NON VERB.	I.Q. TOTAL	% TILE
ELEM.											
SECONDARY	10-7-66	8	Henmon Nelson	A	Gp.	13-8	11-2			80	

OTHER STANDARDIZED TESTS

	DATE	GRADE LEVEL	TYPE	NAME OF TEST	FORM	CITY WIDE YES	CITY WIDE NO	RESULTS
ELEM.								
SECONDARY	10-66	8	Gp	Calif. Language	W	✓		E 71 56 69 71
	11-66	8	"	" Arith	W	✓		A 79 55 67 84

ADDITIONAL TESTS RESULTS—COMMENTS

PERSONALITY TRAITS

	6	7	8	9	10	11	12
INITIATIVE							
Merely conforms							
Seldom initiates		✓					
Frequently initiates			✓				
Self-reliant				✓			
Actively creative					✓		
WORK HABITS							
Seldom produces							
Works only under pressure							
Needs considered prodding		✓					
Consistently prepared			✓				
Seeks additional work				✓			
INFLUENCE AND LEADERSHIP					✓		
Negative							
Co-operative but retiring		✓					
Contributing in minor affairs			✓				
Contributing in important affairs				✓	✓		
Judgment requested - makes things go						✓	

	6	7	8	9	10	11	12
CONCERN FOR OTHERS							
Indifferent							
Self-centered			✓				
Somewhat socially concerned		✓		✓	✓		
Generally concerned						✓	
Deeply concerned							
RESPONSIBILITY							
Irresponsible			✓				
Somewhat dependable		✓			✓		
Usually dependable				✓		✓	
Conscientious							
Assumes much responsibility							
EMOTIONAL STABILITY							
Unresponsive							
Excitable		✓		✓		✓	
Usually well-balanced			✓		✓		✓
Exceptionally stable							

	6	7	8	9	10	11	12
ATTENTION TO SCHOOL REGULATIONS							
Actively opposes regulations			✓		✓		
Indifferent		✓		✓		✓	
Usually cooperates							
Follows regulations conscientiously							
An exemplary school citizen							
PERSONAL APPEARANCE AND DRESS							
Generally inappropriate							
Tendency to follow extreme trends							
Usually tidy		✓	✓	✓	✓		
Neat and dressed in good taste							
Exceptionally attractive appearance							
ADDITIONAL COMMENTS							

Exhibit 5 B continued

ELEMENTARY SUMMARY

NAME SMITH, Carl Matthew (M) F From WEST MOUND STREET Elementary School
(LAST, FIRST, MIDDLE; SEX)

BIRTHPLACE Columbus (CITY OR COUNTY) Ohio (STATE) BIRTH DATE 11 17 52 (MO. DA. YR.) VALIDATION Mother's Cert.

GENERAL ACADEMIC RATING

Excellent	
Above Average	
Average	
Below Average	
Poor	

SPECIAL APTITUDES

HEALTH DATA

Asthma		Heart	
Brain damage		Hernia	
Crippled		Kidney	
Diabetes		Rheumatic Fever	
Epilepsy		Speech	
Hearing		Vision	

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

SERIOUS ILLNESS—ACCIDENTS

	DATE		DATE

NOTE: The elementary school will provide test data, parental data and initial information on pages 2 and 3 as indicated.

ADDITIONAL INFORMATION (to be dated and signed)
ELEMENTARY

IMMUNIZATIONS

TYPE		DATE
Smallpox		
D.P.T.	1.	
	2.	
	3.	
	B.	
Polio	1.	
	2.	
	3.	

SECONDARY

Carl Smith has threatened to attack me at the end of the 1970 school year. He also stated that he would attack my car & my home
3/5/70 Mr Osborn

EXHIBIT 6 A

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 16, 1971

Mr. & Mrs. Floyd Sutton
2949 Fairwood Avenue
Columbus, Ohio

Dear Parents:

I have suspended Rudolph, your son, from Marion-Franklin High School until Thursday, March 25. The Pupil Personnel Department will notify you concerning a disposition of this case.

Rudolph was involved in a disturbance at school on Monday, March 15. He defiantly refused to follow the directions of the principal. Furthermore, he created an explosive situation.

During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

OSCAR R. GILL
Assistant Principal

EXHIBIT 6 B

March 23, 1971

Mr. Richard Stinemetz, Prin.
South High School

Dear Mr. Stinemetz:

Approval is given for Rudolph Sutton, 2949 Fairwood Ave., to enroll at South High School for the balance of the 1970-71 school year. (Adjustment)

Please call if you have any questions.

Sincerely,

H. M. WILLIAMS, *Director*
Pupil Personnel

EXHIBIT 6 C

COLUMBUS PUBLIC SCHOOLS

ACADEMIC RECORD

Lowndes SENIOR HIGH SCHOOL
(To be Retained)

NAME Sutton (LAST) Rudolph (FIRST) Ray (MIDDLE) HOME ROOM 211

ADDRESS [illegible] PHONE 491-2399

RESIDES WITH Floyd L. & Juanita RELATIONSHIP Father & mother

	DATE	REASON
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS

PHOTO

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME

ADDRESS

PHONE

Exhibit 6 C continued

South HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME: Sutton Nidesya Rose ADDRESS:

SEX: Cf DATE OF BIRTH: 12 27 51 PLACE OF BIRTH: Lee County Georgia

PARENT OR GUARDIAN: Floyd V Jeanette

DATE ENTERED: 8 29 71 ADMITTED FROM: Marion-Franklin

☐ WAS NOT GRADUATED ☒ WAS GRADUATED DATE OF DIPLOMA: June 6, 1971 REGULAR

NUMBER IN GRADUATING CLASS: RANK IN CLASS: AS COMPUTED: (DATE)

POINT AVERAGE: AS COMPUTED: (DATE) R B Strametz PRINCIPAL

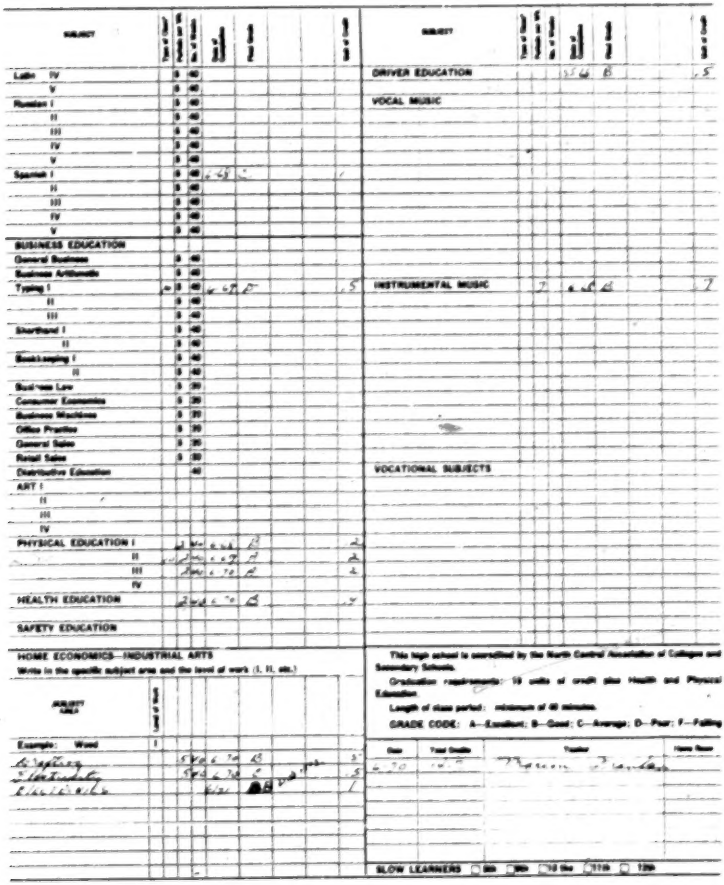
SUBJECT	Grade Level	Semester	Days Absent	Mark	Credit			Credit Earned
LANGUAGE ARTS								
English I (9)	8	1	40	4 68	D-			1/
II (10)		2	40	4 69	D			1/
III (11)		1	40	4 70	C			1
English Literature & Composition		2	40	2/11	C			1
Cont. Literature & Composition		1	40					
Business English		2	40					
Dramatics (9)		2	40					
Journalism		2	40					
Speech I (Public Skills and Television)		1	40					
Speech II (Dramatics)		2	40					
SOCIAL STUDIES								
World History	9	1	40	4 69	D			1/
American History		1	40	4 70	C			1/
Principles of Democracy		1	40	69	D			1/
Current History		1	20					
		2	20					
Geography		1	20					
		2	20					

SUBJECT	Grade Level	Semester	Days Absent	Mark	Credit			Credit Earned
MATHEMATICS								
General Mathematics	8	1	40	4 68	D-			1/
Shop Mathematics		2	40					
Algebra I	10	1	40	4 69	D			1
Algebra II		2	40	69/71	D			1/
Geometry (Plane & Solid)		1	40	4 70	C			1/
Trigonometry		1	20					
Analytical Geometry		2	20					
Advanced Mathematics V		1	40					
Senior Review Arithmetic		2	40					
SCIENCE								
General Science I	8	1	40	4 68	D-			1/
Physical Science II		1	40					
Biology I	10	1	40	4 67	C			1/
Biology II		2	40					
Chemistry		2	40					
Physics		2	40					
FOREIGN LANGUAGE								
French I		1	40					
II		2	40					
III		1	40					
IV		2	40					
V		1	40					
German I		1	40					
II		2	40					
III		1	40					
IV		2	40					
V		1	40					
Latin I		1	40					
II		2	40					
III		1	40					

*Write in the lowest table marked at the left. Leave blank if regular.

3 15-71 Suspended for school disruption

Exhibit 6 C continued



NAME SUTTON, RUDOLPH RUEL M X F
LAST FIRST MIDDLE

CUMULATIVE PERSONAL RECORD
Columbus, Ohio, Public Schools Sch. 21
(To follow pupil)

HOME ROOM 12/10 XX 158-6 115 211

GRADE LEVEL	7	8	9	10	11	12
				Sem	Mast	

PROMOTED FROM Watkins ELEMENTARY SCHOOL—DATE 6-11-65

GRADUATED FROM BEERY JUNIOR HIGH SCHOOL—DATE 6-68

GRADUATED FROM SENIOR HIGH SCHOOL—DATE

IN CASE OF EMERGENCY NOTIFY:
(If Parent Not Available)
NAME Mrs Dorothy Broomfield
ADDRESS 323 Miller Av PHONE CE 8 2536
NAME
ADDRESS PHONE
(Note: Use Pencil For Above)

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION
Marion Franklin	68-69	—
Marion Franklin	69-70	

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY
Beery	66-67	Baseball
Beery	66-67	Basketball
BCJ 28	67-68	BAND
Marion Franklin	68-69	Football Rec Letter
Marion Franklin	69-70	[illegible]

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	REASON*	REMARKS

*"A" Home needed funds. "B" Spending money. "C" Parents' desire. "D" Child's own desire. "E" Home provided employment. "F" Other

OUT-OF-SCHOOL ACTIVITIES

DATE	

Exhibit 6 C continued

Exhibit 6 C continued

RESIDENTIAL DATA

SCHOOL		DATE ENTERED	DATE WITHDRAWN	REASON	RESIDENCE	PHONE	RESIDES WITH (RELATIONSHIP)	TUITION (Class)	NON-RESIDENT STATE	NON-RESIDENT COUNTY
Watkins	Elem.	4-24-62		☐ Reg. Prom. ☒ Sp. Prom.	2949 Fairwood Ave.	491-2399	Parents			
	Junior									
	Junior									
	Junior									
	Junior									
Meriz. Fr. th.	Senior	9-68	3-23-71	South U S	(Appointment)					
Lovell	Senior	3-29-71								
	Senior									
	Senior									

PARENTAL DATA

	LAST	FIRST	MIDDLE	MARITAL STATUS	OCCUPATION	BUSINESS ADDRESS	BUSINESS PHONE	PERSONAL PHONE
FATHER	Sutton,	Floyd Rufus		M	Postman	2430 Clearfield Ln.	499-0548	
MOTHER (Maiden name)	Long,	Juanita -		M	Housewife			
STEP-PARENT								
GUARDIAN								

ATTENDANCE DATA

SCHOOL	GRADE LEVEL	DATE ENTERED	TIMES TARDY	DAYS PRESENT	DAYS ABSENT	DATE(S) OF ABSENCE	COMMENTS REGARDING HOME COOPERATION
Watkins	6	9-59	0	179	3		
Emery Jr	7	9-61	0	181	0		
Emery Jr	8	9-66	0	179	2		
Emery Jr. H.	9	9-67	2	174	8		
Bryant Middle	10	9-68	5	176	5		
Marion Middle	11	9-69	8	179	3		
"	12	9-70	12	118	12		
Lovell	12	3-29-71					

*Values of Absence Code: (use for 10 or more days - several numbers may apply)

1. Irregular
2. Continuous
3. Personal Illness
4. Family Illness
5. Truancy
6. Out of Town
7. Suspension
8. Indigent

COUNSELING RECORD*

DATE	TYPE	COMMENTS

*Type of Counseling Code:

1. Educational
2. Vocational
3. Personal
4. Other

Exhibit 6 C continued

TEST DATA

INTELLIGENCE

	DATE	GRADE LEVEL	NAME OF TEST	FORM	TYPE	CA	MA	I.Q. VERB.	I.Q. NONVERB.	I.Q. TOTAL	% TILE
ELEM.	1-16-64	5	Calif. Mental Mat.	S		12-1	10-6	78	91	85	
	4-7-65	6	Stanford-Binet	M		13-3	9-6			72	
	4-7-65	6	Peabody Picture Vocabulary			13-3				88	
SECONDARY	12-66	8	Hammon-McCarthy	A	SA					84	

ADDITIONAL TESTS RESULTS—COMMENTS

3-15-71 Suspended for school disruption

OTHER STANDARDIZED TESTS

	DATE	GRADE LEVEL	TYPE	NAME OF TEST	FORM	CITY WIDE YES	CITY WIDE NO	RESULTS
ELEM.	4-1-65	6	Read.	Stanford Achieve.	X	X		4th Gen 4.6
	4-1-65	6	Arith.	" "	X	X		4th Gen 4.7
SECONDARY	4-66	7	Read	Malaga	A		V	Voc. 6.9 Para 6.5 Tot 6.8
	11-66	8	Arith	Calif	W	V		Mech. 6.8 Appl. 5.8
	12-66	V	Read	" "	W	V		Voc. 6.4 Read 7.5

PERSONALITY TRAITS

	6	7	8	9	10	11	12
INITIATIVE							
Merely conforms							
Seldom initiates							
Frequently initiates							✓
Self-reliant							
Actively creative							
WORK HABITS							
Seldom produces							
Works only under pressure							
Needs occasional prodding							
Consistently prepared	✓	✓	✓	✓			
Seeks additional work							
INFLUENCE AND LEADERSHIP							
Negative							
Co-operative but retiring							
Contributing in minor affairs	✓	✓	✓	✓	✓	✓	✓
Contribution in important affairs							
Judgment requested—takes things in							

	6	7	8	9	10	11	12
CONCERN FOR OTHERS							
Indifferent							
Self-centered							
Somewhat socially concerned					✓	✓	✓
Generally concerned	✓	✓	✓	✓			
Deeply concerned							
RESPONSIBILITY							
Irresponsible							
Somewhat dependable							
Usually dependable	✓	✓	✓	✓	✓	✓	✓
Conscientious							
Assumes much responsibility							
EMOTIONAL STABILITY							
Unresponsive							
Excitable							
Usually well-balanced	✓	✓	✓	✓	✓	✓	✓
Exceptionally stable							

	6	7	8	9	10	11	12
ATTENTION TO SCHOOL REGULATIONS							
Actively opposes regulations							
Indifferent							
Usually cooperates	✓	✓	✓	✓	✓	✓	✓
Follows regulations conscientiously							
An exemplary school citizen							
PERSONAL APPEARANCE AND DRESS							
Generally inappropriate							
Tendency to follow extreme trends							
Usually tidy						✓	
Neat and dressed in good taste	✓	✓	✓	✓		✓	✓
Exceptionally attractive appearance							
ADDITIONAL COMMENTS							

Exhibit 6 C continued

ELEMENTARY SUMMARY

NAME SUTTON, (LAST) RUDOLPH (FIRST) RUEL (MIDDLE) M (SEX) F From Watkins Elementary School

BIRTHPLACE Terra Haute (CITY OR COUNTY) Indiana (STATE) BIRTH DATE 12 (MO.) 29 (DA.) 51 (YR.) VALIDATION B.C.

GENERAL ACADEMIC RATING

Excellent	
Above Average	
Average	
Below Average	✓
Poor	

SPECIAL APTITUDES

HEALTH DATA

Asthma		Heart	
Brain damage		Hernia	
Crippled		Kidney	
Diabetes		Rheumatic Fever	
Epilepsy		Speech	
Hearing		Vision	

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

SERIOUS ILLNESS—ACCIDENTS

	DATE		DATE

NOTE: The elementary school will provide test data, parental data and initial information on pages 2 and 3 as indicated.

ADDITIONAL INFORMATION (to be dated and signed)

ELEMENTARY

SECONDARY

IMMUNIZATIONS

TYPE		DATE
Smallpox		1956
D.P.T.	1.	
	2.	
	3.	1956
	B.	
Polio	1.	
	2.	
	3.	1961

EXHIBIT 7 A

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 16, 1971

Mr. & Mrs. William Vance
1588 Burley Drive
Columbus, Ohio

Dear Parents:

I have suspended Tyrone, your son, from Marion-Franklin High School until Thursday, March 25. The Pupil Personnel Department of the Columbus Board of Education will notify you concerning a disposition of this case.

Tyrone was involved in a disturbance at school on Monday, March 15. He defiantly refused to follow the directions of the principal. Furthermore, he created an explosive situation.

During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

OSCAR R. GILL
Assistant Principal

EXHIBIT 7 B

COLUMBUS PUBLIC SCHOOLS
ACADEMIC RECORD

Sub 38

_____ SENIOR HIGH SCHOOL
(To be Retained)

NAME Washington (LAST) Tyrone (FIRST) Lamont (MIDDLE) HOME ROOM 24

ADDRESS 1588 Burley Dr PHONE 491-0769

RESIDES WITH William & Donna Vance RELATIONSHIP parents

	DATE	REASON
WITHDRAWN	3-14-70	To Marion Franklin
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS
2-17-70	UA Adams Court	
4-1-70	Marion Franklin	

PHOTO

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME _____

ADDRESS _____

PHONE _____

Exhibit 7 B continued

_____ HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME: Washington Jerome Simon (Last) (First) (Middle) ADDRESS: 1588 Burley Dr

SEX: M (M or F) DATE OF BIRTH: 4 (Month) 2 (Day) 52 (Year) PLACE OF BIRTH: Springfield Ohio (City) (State)

PARENT OR GUARDIAN: Williams Polly Vance

DATE ENTERED: _____ ADMITTED FROM: Marion-Franklin (City) (State)

☐ WAS NOT GRADUATED ☑ WAS GRADUATED DATE OF DIPLOMA: JUN 6 1971

NUMBER IN GRADUATING CLASS: 311 RANK IN CLASS: 145 AS COMPUTED: June 1971 (DATE)

POINT AVERAGE: 1.861 AS COMPUTED: June 1971 (DATE) Jack N. Gilliland PRINCIPAL

SUBJECT	Year of Course	No. of Periods per Wk.	No. of Weeks	Semester Grade	Final Grade				Unit of Credit
LANGUAGE ARTS									
English I (9)	9	40	6	6-68	C				1.
II (10)	9	40	6	6-69	D				1.
III (11)	9	40	6	X	B				1.
English Literature & Composition	9	40							
Comp. Literature & Composition	9	40							
Business English	9	40	6	1 71	C				1.
Dramatics (9)	9	40	6	6-68	B				.2
Journalism	9	40							
Speech I (Public Radio and Television)	9	40	12	1 71	C				1.0
Speech II (Dramatics)	9	40	12	1 71	C				1.0
SOCIAL STUDIES									
World History	9	40	6	2-69	D				1.
American History	10	40	6	2-70	C				1.
Principles of Democracy	9	40	12	1 71	B				1.0
Current History	9	20	6	1 71	B				1.0
	9	20							
Geography	9	20							
	9	20							

SUBJECT	Year of Course	No. of Periods per Wk.	No. of Weeks	Semester Grade	Final Grade				Unit of Credit
MATHEMATICS									
General Mathematics	9	40	6	6-68	C				1.
Shop Mathematics	9	40							
Algebra I	9	40	6	6-69	F				
Algebra II	9	40							
Geometry (Plane & Solid)	9	40							
Trigonometry	9	20							
Analytical Geometry	9	20							
Advanced Mathematics V	9	40							
Senior Review Arithmetic	12	40							
Gen Math II	10	40	6	2-70	C				1.
SCIENCE									
General Science I	9	40	6	6-68	F				1.
Physical Science II	9	40							
Biology I	9	40	6	6-69	C				1.
Biology II	7	40							
Chemistry	7	40							
Physics	7	40							
FOREIGN LANGUAGE									
French I	9	40							
II	9	40							
III	9	40							
IV	9	40							
V	9	40							
German I	9	40							
II	9	40							
III	9	40							
IV	9	40							
V	9	40							
Latin I	9	40							
II	9	40							
III	9	40							

*Units in the Lower Left Quarter of 20 are modified. Lower Block if regular.

Exhibit 7 B continued

SUBJECT	Type of Class*	Periods per Wk.	No. of Weeks	Date Completed	Final Grade			Unit of Credit
Latin IV		5	40					
V		5	40					
Russian I		5	40					
II		5	40					
III		5	40					
IV		5	40					
V		5	40					
Spanish I		5	40					
II		5	40					
III		5	40					
IV		5	40					
V		5	40					
BUSINESS EDUCATION								
General Business		5	40	6 68	C			1.
Business Arithmetic		5	40					
Typing I		5	40	6 69	A			.5
II		5	40	1/71	B			.5
III		5	40					
Shorthand I		5	40					
II		5	40					
Bookkeeping I		5	40					
II		5	40					
Business Law		5	20					
Consumer Economics		5	20					
Business Machines		5	20					
Office Practice		5	20					
General Sales		5	40	6 70	C			1.
Retail Sales		5	20					
Distributive Education			40					
ART I								
II								
III								
IV								
PHYSICAL EDUCATION I				6 68	B			.2
II				6 69	A			.2
III				6 70	Med. Ex			.2
IV								.2
HEALTH EDUCATION		2	40	6 70	C			.4
SAFETY EDUCATION								

SUBJECT	Type of Class*	Periods per Wk.	No. of Weeks	Date Completed	Final Grade			Unit of Credit
DRIVER EDUCATION								
VOCAL MUSIC								
INSTRUMENTAL MUSIC								
VOCATIONAL SUBJECTS								

HOME ECONOMICS—INDUSTRIAL ARTS
Write in the specific subject area and the level of work (I, II, etc.)

SUBJECT AREA	Level of Work								Unit of Credit
Example: Wood	I								
Mech DR	I	4	40	6 68	C				.4

This high school is accredited by the North Central Association of Colleges and Secondary Schools.

Graduation requirements: 16 units of credit plus Health and Physical Education.

Length of class period: minimum of 40 minutes.

GRADE CODE: A—Excellent; B—Good; C—Average; D—Poor; F—Failing

Date	Total Credits	Teacher	Home Room
6 70	12 5	Myrna Franklin	
6/71	18 0	E Ogonowski	E-11

SLOW LEARNERS ☐ 8th ☐ 9th ☐ 10 the ☐ 11th ☐ 12th

CUMULATIVE PERSONAL RECORD

Columbus, Ohio, Public Schools

(To follow pupil)

Sch. 21

NAME WASHINGTON (Last) Tyrone (First) Demont (Middle) (M) (W) (Ind) F (Sex)

HOME ROOM 211 211 — 1 107 211

GRADE LEVEL 7 8 — 10 11 12

PROMOTED FROM Main Street ELEMENTARY SCHOOL—DATE 6/11/65

GRADUATED FROM JUNIOR HIGH SCHOOL—DATE

GRADUATED FROM East SENIOR HIGH SCHOOL—DATE 6-71

IN CASE OF EMERGENCY NOTIFY:
(If Parent Not Available)

NAME [illegible]

ADDRESS PHONE

NAME [illegible]

ADDRESS PHONE 50-[illegible]

(Note: Use Pencil For Above)

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION
Franklin Jr	5-67	Track Team

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY
Franklin	1966-67	Nite Club

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	REASON*	REMARKS

*"A" Holds present job. "B" Breaking home. "C" Parents' desire. "D" Dislikes school. "E" Wants practical experience. "F" Other

OUT-OF-SCHOOL ACTIVITIES

DATE	

Exhibit 7 B continued

Exhibit 7 B continued

RESIDENTIAL DATA

SCHOOL		DATE ENTERED	DATE WITHDRAWN	REASON	RESIDENCE	PHONE	RESIDES WITH (RELATIONSHIP)	TUITION (Check)	NON-RESIDENT STATE	NON-RESIDENT COUNTY
Main St	Elem.	10/5/64	6/11/65	☐ Sp. From. ☐ Sp. From.	1537 E Rock St.					
Franklin	Junior	9-65			152 Linden					
	Junior									
	Junior									
East High School	Senior	Sept 4 66	3-17-70	Marion Franklin	262 Miller	WIFE	PARENTS			
M-F	Senior	3-30-70	3-2371	Malcolm (adp)						
	Senior		6 71	GRADUATED						
	Senior									

PARENTAL DATA

	LAST	FIRST	MIDDLE	MARITAL STATUS	OCCUPATION	BUSINESS ADDRESS	BUSINESS PHONE	FOREIGN BORN
FATHER	Washington	John	R	Div				
MOTHER (Maiden name)		Dollie		M	dec.			
STEP-PARENT	VANCE	William		M	Janitor			
GUARDIAN								

ATTENDANCE DATA

SCHOOL	GRADE LEVEL	DATE ENTERED	TIMES TARDY	DAYS PRESENT	DAYS ABSENT	NATURE OF ABSENCE*	COMMENTS REGARDING HOME COOPERATION
Main St	6	10/5/64	2	144½	17½		ok
Franklin Jr High	7	9-65	9	140	40		?
	8	9-66	25	140½	37½	1.	
	9	9-67	18	138½	50½	1.	Poor
Lincoln	10	10 4 68	16	114½	66½	1,3	
	10	9-69	18	69	59		(D in F)
Harris Franklin	11	8 8 70	5	91½	129½		
	12	8 3 70	20	105½	21½		
East	12	2/8/71	0	60	11		

*Nature of Absence Code: Use for 10 or more days - several numbers may apply

1. Irregular 2. Personal Illness 3. Truancy 4. Suspension
5. Confinement 6. Family Illness 7. Out of Town 8. Indigent

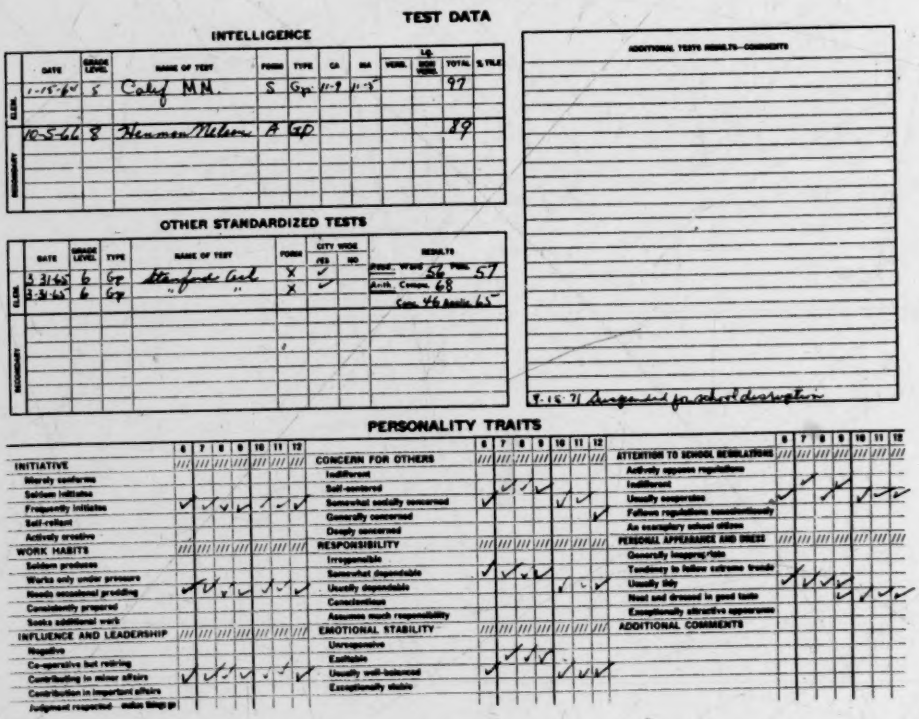
COUNSELING RECORD*

DATE	TYPE	COUNSELOR

*Type of Counseling Code:

1. Educational 2. Personal
3. Vocational 4. Other

Exhibit 7 B continued



TEST DATA

INTELLIGENCE

	DATE	GRADE LEVEL	NAME OF TEST	FORM	TYPE	CA	MA	IQ VERB.	IQ NON VERB.	IQ TOTAL	% TILE
ELEM.	1-15-64	5	Calif MN.	S	Gp	11-9	11-5			97	
SECONDARY	10-5-66	8	Herman Nelson	A	GP					89	

OTHER STANDARDIZED TESTS

	DATE	GRADE LEVEL	TYPE	NAME OF TEST	FORM	CITY WIDE YES	CITY WIDE NO	RESULTS
ELEM.	3-31-65	6	Gp	Stanford Ach	X	✓		Read. Word 56 Para. 57
	3-31-65	6	Gp	" "	X	✓		Arith. Comp. 68
								Com. 46 Battle 63
SECONDARY								

ADDITIONAL TESTS RESULTS—COMMENTS

9-15-71 Suspended for school disruption

PERSONALITY TRAITS

	6	7	8	9	10	11	12
INITIATIVE							
Wisely conforms							
Seldom initiates							
Frequently initiates	✓	✓	✓	✓	✓	✓	✓
Self-reliant							
Actively creative							
WORK HABITS							
Seldom produces							
Works only under pressure							
Needs occasional prodding	✓	✓	✓	✓	✓	✓	✓
Consistently prepared							
Seeks additional work							
INFLUENCE AND LEADERSHIP							
Negative							
Co-operative but retiring							
Contributing in minor affairs	✓	✓	✓	✓	✓	✓	✓
Contributes in important affairs							
Judgment respected - makes things go							

	6	7	8	9	10	11	12
CONCERN FOR OTHERS							
Indifferent							
Self-centered							
Somewhat socially concerned	✓	✓	✓	✓	✓	✓	
Generally concerned							✓
Deeply concerned							
RESPONSIBILITY							
Irresponsible							
Somewhat dependable	✓	✓	✓	✓			
Usually dependable					✓	✓	✓
Conscientious							
Assumes much responsibility							
EMOTIONAL STABILITY							
Unresponsive							
Excitable							
Usually well-balanced	✓	✓	✓	✓	✓	✓	✓
Exceptionally stable							

	6	7	8	9	10	11	12
ATTENTION TO SCHOOL REGULATIONS							
Actively opposes regulations							
Indifferent		✓					
Usually cooperates			✓	✓	✓	✓	✓
Follows regulations conscientiously	✓						
An exemplary school citizen							
PERSONAL APPEARANCE AND DRESS							
Generally inappropriate							
Tendency to follow extreme trends	✓	✓	✓	✓			
Usually tidy					✓	✓	✓
Neat and dressed in good taste							
Exceptionally attractive appearance							
ADDITIONAL COMMENTS							

ELEMENTARY SUMMARY

NAME WASHINGTON (LAST) Tyrone (FIRST) Demont (MIDDLE) (M) F (SEX) From Main St. Elementary School

BIRTHPLACE Springfield (CITY OR COUNTY) Ohio (STATE) BIRTH DATE 4 (MO) 2 (DA) 52 (YR) VALIDATION Birth Certificate

GENERAL ACADEMIC RATING

Excellent	
Above Average	
Average	✓
Below Average	
Poor	

SPECIAL APTITUDES

HEALTH DATA

Asthma		Heart	
Brain damage		Hernia	
Crippled		Kidney	
Diabetes		Rheumatic Fever	
Epilepsy		Speech	
Hearing		Vision	

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

SERIOUS ILLNESS—ACCIDENTS

	DATE		DATE

NOTE: The elementary school will provide test data, parental data and initial information on pages 2 and 3 as indicated.

ADDITIONAL INFORMATION (to be dated and signed)

ELEMENTARY

SECONDARY

IMMUNIZATIONS

TYPE		DATE
Smallpox		53 - 63
D.P.T.	1.	52 - IV
	2.	53
	3.	
	B.	1962
Polio	1.	Comp.
	2.	
	3.	
see chart		

Exhibit 7 B continued

EXHIBIT 7 B continued

March 16, 1971

Mr. & Mrs. William Vance
1588 Burley Drive
Columbus, Ohio

Dear Parents:

I have suspended Tyrone, your son, from Marion-Franklin High School until Thursday, March 25. The Pupil Personnel Department of the Columbus Board of Education will notify you concerning a disposition of this case.

Tyrone was involved in a disturbance at school on Monday, March 15. He defiantly refused to follow the directions of the principal. Furthermore, he created an explosive situation.

During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

OSCAR R. GILL
Assistant Principal

CC: Mr. C. L. Dumaree
Mr. H. M. Williams
Mr. Philip Fulton
Mr. Richard Kollmer

EXHIBIT 8 A

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 15, 1971

Mr. & Mrs. Clarence L. Byars
1492 Venice Drive
Columbus, Ohio

Dear Parents:

I have suspended Clarence from Marion-Franklin High School until Thursday, March 18. I will reserve 9:00 a.m. on this day for a conference with you and your son.

Clarence refused to go to class as directed, was disrespectful with the principal, and was inciting a school disruption.

During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

RICHARD KOLLMER
Assistant Principal

EXHIBIT 8 B

COLUMBUS PUBLIC SCHOOLS

Rev 29

ACADEMIC RECORD

Marion Franklin

SENIOR HIGH SCHOOL

(To be Retained)

NAME Byrd Clarence Lee HOME ROOM 1132

ADDRESS 1492 Venus Dr PHONE 327-4405

RESIDES WITH Mother & Father RELATIONSHIP

	DATE	REASON
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS
1-10-72	Marietta College	
2-2-72	Columbus Urban League	
2-29-72	Antioch College	
5-8-72	Franklin U.	
6-26-72	Newark Univ. Inc. 40th Ave. Newark	
7-27-72	Tuskegee Institute Tuskegee Inst, Alabama	
8-9-73	Franklin U	

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME

ADDRESS

PHONE

Exhibit 8 B continued

" Franklin " 1 HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME Byars Clarence Lee ADDRESS 1992 Venice Dr.
(Last) (First) (Middle)

SEX: M (M or F) DATE OF BIRTH: 3 24 54 PLACE OF BIRTH: Columbus Ohio
(Month) (Day) (Year) (City) (State)

PARENT OR GUARDIAN: Clarence E. Darlene Foster

DATE ENTERED: 9-69 ADMITTED FROM: (City) (State) SCHOOL

☐ WAS NOT GRADUATED ☒ WAS GRADUATED DATE OF DIPLOMA: 6-11-72

NUMBER IN GRADUATING CLASS: 328 RANK IN CLASS: 94 AS COMPUTED: 1-72 (Semester)

POINT AVERAGE: 2.559 AS COMPUTED: 1-72 (Semester) Philip E. Fulton PRINCIPAL

SUBJECT	Type of School*	Periods per Week	No. of Weeks	Mid-Year	Final Grade			Unit of Credit
LANGUAGE ARTS								
English I (9)	S	40	6-69		C			1
II (10)	S	40	6-70		B			1
III (11)	S	40	6-71		C			1
*English Literature & Composition	S	40	6-72		C			1.0
*Amer. Literature & Composition	S	40						
*Business English	S	40						
Dramatics (9)	2	40						
Journalism	S	40						
Speech I (Public, Radio and Television)	S	40						
Speech II (Dramatics)	S	40						
SOCIAL STUDIES								
World History	S	40	6-69		C			1.0
American History	S	40	6-70		B			1
Principles of Democracy	S	40	6-71		B			1
Current History	S	20						
	S	20						
Geography	S	20						
	S	20						

*Write S for Semester (state fraction) or Q for [illegible] Unit. Use Block V regular

SUBJECT	Type of School*	Periods per Week	No. of Weeks	Mid-Year	Final Grade			Unit of Credit
MATHEMATICS								
Gen. Mathematics	S	40						
5- to Mathematics	S	40						
Algebra I (9)	S	40	6-69		B			1
Algebra II	S	40	6-71		C			1
Geometry (Plain & Solid)	S	40	6-70		C			1
Trigonometry	S	20						
Analytical Geometry	S	20						
Advanced Mathematics V	S	40						
Senior Review Arithmetic	7	40						
SCIENCE								
General Science I	S	40	6-69		A			1
Physical Science II	S	40						
Biology I	S	40	6-70		B			1.0
Biology II	7	40						
Chemistry	7	40						
Physics	7	40						
Physiology	7	40	6-72		C			1.0
FOREIGN LANGUAGE								
French I	S	40						
II	S	40						
III	S	40						
IV	S	40						
V	S	40						
German I	S	40						
II	S	40						
III	S	40						
IV	S	40						
V	S	40						
Latin I	S	40	6-71		C			1
II	S	40	6-72		C			1.0
III	S	40						

Exhibit 8 B continued

SUBJECT	Type of Class*	No. of Periods per Wk.	No. of Weeks	Date Taken	Final Grade				Unit of Credit
Latin IV		5	40						
V		5	40						
Russian I		5	40						
II		5	40						
III		5	40						
IV		5	40						
V		5	40						
Spanish I		5	40	6-69	C				1
II		5	40	6-70	C				1
III		5	40						
IV		5	40						
V		5	40						
BUSINESS EDUCATION									
General Business		5	40						
Business Arithmetic		5	40						
Typing I		5	40	6-72	C				.5
II		5	40						
III		5	40						
Shorthand I		5	40						
II		5	40						
Bookkeeping I		5	40						
II		5	40						
Business Law		5	20						
Consumer Economics		5	20						
Business Mathématics		5	20						
Office Practice		5	20						
General Sales		5	20						
Retail Sales		5	20						
Distributive Education			40						
ART I		2	40	6-69	A				.2
II		5	40	6-70	B				.5
III									
IV									
PHYSICAL EDUCATION I				6-69	B				.2
II		2	40	6-70	A				.2
III		2	40	6-71	B				.2
IV									
HEALTH EDUCATION		2	40	6-71	A				.4
SAFETY EDUCATION									

SUBJECT	Type of Class*	No. of Periods per Wk.	No. of Weeks	Date Taken	Final Grade				Unit of Credit
HOME EDUCATION				55-74	A				.5
VOCAL MUSIC									
INSTRUMENTAL MUSIC									
BAND		5	40	6-69	B				.5
VOCATIONAL SUBJECTS									

HOME ECONOMICS—INDUSTRIAL ARTS
Write in the specific subject area and the level of work (I, II, etc.)

SUBJECT AREA	Level of Work								
Example—Wood	I								
Beginning Foods		5	40	6-72	C				.5

This high school is accredited by the North Central Association of Colleges and Secondary Schools.

Graduation requirements: 16 units of credit plus Health and Physical Education.

Length of class period, minimum of 40 minutes.

GRADE CODE: A—Excellent, B—Good, C—Average, D—Poor, F—Failing

Date	Total Credits	Teacher	Name Room
6-69	4.9	Dun	126 A
8 69	5.4		
6-70	10.2		
8-70	11.2	6:11	Office
55 70	11.7		
6-71	16.7	Robinson	110 A
6-72	20.7	Powers	110 A

SLOW LEARNERS ☐ 9th ☐ 10th ☐ 11th ☐ 12th

EXHIBIT 8 B continued

March 15, 1971

Mr. & Mrs. Clarence L. Byars
1492 Venice Drive
Columbus, Ohio

Dear Parents:

I have suspended Clarence from Marion-Franklin High School until Thursday, March 18. I will reserve 9:00 a.m. on this day for a conference with you and your son.

Clarence refused to go to class as directed, was disrespectful with the principal, and was inciting a school disruption.

During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

RICHARD KOLLMER
Assistant Principal

CC: Mr. C. L. Dumaree
Mr. H. M. Williams
Mr. Philip Fulton
Mr. Oscar Gill

CUMULATIVE PERSONAL RECORD

Columbus, Ohio, Public Schools (To follow pupil) Beh. 21

NAME STARS (Last) CLARENCE (First) LEE (Middle) JR. SEX M

HOME ROOM 207 Mrs. Miller 206-A Mrs. Lewis 10A

GRADE LEVEL 7 8 9 10 11 12

PROMOTED FROM CLAYFIELD 8-9 ELEMENTARY SCHOOL—DATE

GRADUATED FROM Beery JUNIOR HIGH SCHOOL—DATE 6-69

GRADUATED FROM Marion-Franklin SENIOR HIGH SCHOOL—DATE 6-11-72

IN CASE OF EMERGENCY NOTIFY: (If Parent Not Available)
NAME Mrs Hurst
ADDRESS Lockbourne RFD PHONE C4 2778
NAME
ADDRESS PHONE
(Note: Use Pencil For Above)

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION
Clayfield	1965-66	School Patrol
Beery	66-67	
Beery	67-68	Page Award
		Athletic Letter (Track)
		Scholarship award (Top Scholar)
M-F	70-71	[illegible]
M-F	70-71	
[illegible]	71-72	Pres. & V.P. - Black Culture Club
	71-72	Football Captain
	71-72	3 year track award

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY
Beery	66-67	Band
		Track Team
Beery	67-68	Track Team
		Final Music Band
		Pep Club
		Gym Helper
Beery	68-69	Band - Orchestra
"	" "	Track Team
M-F	3-70	Trip To Spain
	" "	" " " "
	" "	"
	" "	" " " "

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	REASON*	REMARKS
71-72	Shipping Load Space Man	P.	

*"A" Helps support family. "B" Spending money. "C" Parents desire. "D" Enjoys school. "E" Needs practical experience. "F" Other.

[illegible] SCHOOL ACTIVITIES

DATE	
M-F 70-71	Varsity Football, Varsity Track, Varsity M. Club & Class, Treasurer & Chap.
71-72	Football captain, Track team, Track Mgr., Black Culture Club, Medical Honor Society, Spanish Club

Exhibit 8 B continued

RESIDENTIAL DATA

SCHOOL		DATE ENTERED	DATE WITHDREW	REASON	RESIDENCE	PHONE	RESIDES WITH (RELATIONSHIP)	TUITION (Years)	NON-RESIDENT STATE	NON-RESIDENT COUNTY
Clarfield	Elem.	9-65		☐ Reg. From. ☐ Sp. From.	1142 Venice Dr.	491-1155	Mother & S.F.			
Beery	Junior	9-66	6-69	Reg. From	"	"	"			
	Junior									
	Junior									
	Junior									
MARION [illegible]	Senior	9-69								
	Senior									
	Senior									
	Senior									

PARENTAL DATA

	LAST	NAME FIRST	MIDDLE	MARITAL STATUS	OCCUPATION	BUSINESS ADDRESS	BUSINESS PHONE	PERSONAL HOME
FATHER	Byars	Clrence		D				
MOTHER (Maiden name)		Barbara Lowery			Sec'y	B.H.C.	228-6492	Ext. 666
STEP-PARENT	Foster	Clrence					234-26	77
GUARDIAN								

ATTENDANCE DATA

SCHOOL	GRADE LEVEL	DATE ENTERED	TIMES TARDY	DAYS PRESENT	DAYS ABSENT	NATURE OF ABSENCE*	COMMENTS REGARDING HOME COOPERATION
Clarfield	6	9-65					
Beery Jr.	7	9-66	0	187	1	ill	
Beery Jr.	8	9-67	0	180	6	sick	
	9	9-68	3	179	5	3	
MARION [illegible]	10	9-69	1	172	13		
[illegible]	11	9-70	11	167	12½	3	Ab. 2nd day on
		1-8-71	7	169½	12½	3	

*Absence of Absence Code: Use for 10 or more days - several numbers may apply

1. Irregular 2. Personal Illness 3. Truancy 4. Suspension
5. Confinement 6. Family Illness 7. Out of Town 8. Indigent

COUNSELING RECORD*

DATE	TYPE	COUNSELOR

Exhibit 8 B continued

TEST DATA

INTELLIGENCE

	DATE	GRADE LEVEL	NAME OF TEST	FORM	TYPE	CA	MA	Lg. VERB	Lg. NON VERB	TOTAL	% TILE
ELEM.	2-67	2	Kuhlmann Anderson	S	I	7-6	6-7			87	
	10-67	3	Calif. T. M.							109	
	4-68	4	" " "	B						99	
SECONDARY											

OTHER STANDARDIZED TESTS

	DATE	GRADE LEVEL	TYPE	NAME OF TEST	FORM	CITY WIDE YES	CITY WIDE NO	RESULTS
ELEM.	2-67	2	Arith	Friend of Ach.	I	x		21/61
	10-67	3	Read	Nat. Read. Ach.	A	x		36-26 Raw Score
	3-68	3	Ach.	Stanford Ach.	W	x		Arith 4.8 Read 3.5
	4-68	6	Ach.	Stanford Tech.	x	✓		Prim. 2: 3.8 Int 6.0
SECONDARY								

ADDITIONAL TESTS RESULTS - COMMENTS

8YARS CLARENCE L 8

300 380 0371 AH46OM1470 11

PERSONALITY TRAITS

	6	7	8	9	10	11	12
INITIATIVE							
Merely conforms							
Seldom initiates							
Frequently initiates		✓	✓				
Self-reliant				✓	✓	✓	✓+
Actively creative							
WORK HABITS							
Seldom produces							
Works only under pressure							
Needs occasional prodding		✓		✓	✓	✓	✓
Consistently prepared			✓				
Seeks additional work							
INFLUENCE AND LEADERSHIP							
Negative						✓	
Co-operative but retiring							
Contributing in minor affairs		✓		✓	✓		✓
Contribution in important affairs			✓				
Judgment requested – notes this p							

	6	7	8	9	10	11	12
CONCERN FOR OTHERS							
Indifferent							
Self-centered							
Somewhat socially concerned		✓	✓				
Generally concerned				✓	✓	✓	✓✓
Deeply concerned							
RESPONSIBILITY							
Irresponsible							✓
Somewhat dependable		✓					
Usually dependable			✓				
Conscientious				✓	✓	✓	✓
Assumes much responsibility							
EMOTIONAL STABILITY							
Unresponsive			•			•	
Excitable							
Usually well-balanced		✓	✓		✓	✓	✓✓
Exceptionally stable				✓			

	6	7	8	9	10	11	12
ATTENTION TO SCHOOL REGULATIONS							
Actively opposes regulations							✓
Indifferent							
Usually cooperates		✓		✓			
Follows regulations conscientiously		✓	✓		✓		✓
An exemplary school citizen							
PERSONAL APPEARANCE AND DRESS							
Generally inappropriate							
Tendency to follow extreme trends							
Usually tidy		✓					
Neat and dressed in good taste		✓	✓	✓	✓	✓	✓
Exceptionally attractive appearance							
ADDITIONAL COMMENTS							

Exhibit 8 B continued

ELEMENTARY SUMMARY

NAME BYARS CLARENCE LEE JR. XXX M From CLAYFIELD Elementary School
(LAST) (FIRST) (MIDDLE) (SEX)

BIRTHPLACE Columbus, Ohio (CITY OR COUNTY) (STATE) BIRTH DATE 3-24-52 (MO. DA. YR.) VALIDATION Vital Stat.

GENERAL ACADEMIC RATING

Excellent	
Above Average	
Average	
Below Average	
Poor	

SPECIAL APTITUDES

HEALTH DATA

Asthma		Heart	
Brain damage		Hernia	
Crippled		Kidney	
Diabetes		Rheumatic Fever	
Epilepsy		Speech	
Hearing		Vision	

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

SERIOUS ILLNESS—ACCIDENTS

	DATE		DATE

NOTE: The elementary school will provide test data, parental data and initial information on pages 2 and 3 as indicated.

ADDITIONAL INFORMATION (to be dated and signed)

ELEMENTARY

SECONDARY

IMMUNIZATIONS

TYPE		DATE
Smallpox		1954
D.P.T.	1.	
	2.	
	3.	1957
	4.	1959
Polio Sabine	1.	
	2.	
	3.	1963
Salk #4		1959

EXHIBIT 9 A

Superintendent of Schools - Harold H. Eibling

MARION - FRANKLIN HIGH SCHOOL
1265 Koebel Road, Columbus, Ohio 43207

March 23, 1971

Mr. & Mrs. Freddie Robison
1456 Wayland Drive
Columbus, Ohio

Dear Mr. & Mrs. Robison:

I have suspended Bruce, your brother, from Marion-Franklin High School until Tuesday, March 30.

During the suspension the Pupil Personnel Department of the Columbus Board of Education will review with you the contents of the letter of November 6, 1970.

Bruce disrupted the assembly and walked out of the assembly this morning. This he did after the principal made clear if a student did he would be suspended.

During the suspension period, your brother is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,

OSCAR R. GILL
Assistant Principal

EXHIBIT 9 B

November 6, 1970

Mr. & Mrs. Freddie Robison
1456 Wayland Drive
Columbus, Ohio 43207

Dear Mr. & Mrs. Robison:

This letter is to confirm the phone conversation I had with Bruce last night. We have been able to clear things for Bruce to return to Marion-Franklin High School. This special permission has been approved by Mr. Fulton, the principal at Marion-Franklin. Bruce is to report to Mr. Fulton on November 9.

As I explained to Bruce, we will expect him to have good behavior, satisfactory attendance and make normal progress in his school work. If he falls below normal expectation in any one of these three areas, I have asked Mr. Fulton to contact me. I feel sure, however, that this will not be the case and that Bruce will finish the year at Marion-Franklin.

Sincerely,

NORVAL GOSS
Pupil Personnel Dept.

EXHIBIT 9 C

COLUMBUS PUBLIC SCHOOLS
ACADEMIC RECORD

Form 33
REVISED - JUNE 1969

Eastmoor SENIOR HIGH SCHOOL
(To be Retained)

NAME Harris Bruce HOME ROOM
LAST FIRST MIDDLE

ADDRESS PHONE

RESIDES WITH RELATIONSHIP

DATE OF BIRTH 9.17.51 DATE ENTERED

	DATE	REASON
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		
WITHDRAWN		
RE-ENTERED		

PHOTO

Indicate below the name of one adult, other than parent, who will probably know the pupil's residence for two years following graduation.

NAME

ADDRESS

PHONE

Exhibit 9 C continued

Eastmoor HIGH SCHOOL COLUMBUS, OHIO

CERTIFICATE OF CREDIT

NAME: Harris Bruce ADDRESS:

SEX: M DATE OF BIRTH: 9 13 51 PLACE OF BIRTH: Norfolk City Va.

PARENT OR GUARDIAN:

DATE ENTERED: ADMITTED FROM Marion-Franklin

[ ] WAS NOT GRADUATED [X] WAS GRADUATED DATE OF DIPLOMA: 6-14-72

NUMBER IN GRADUATING CLASS: 109 RANK IN CLASS: 93 LAST COMPUTED: 5-3-72

POINT AVERAGE: 1.0741 AS COMPUTED: 7-16-72 G. M. Damron PRINCIPAL

SUBJECT												
LANGUAGE ARTS												
English I	(9)	11	1	40	66	B				1		
II	(10)	11	1	40	63	F						
III	(11)		1	40	57	D	1	2	F	1/2		
English Literature & Composition			1	40								
Cont. Literature & Composition			1	40	71	E	1/2	2	E	1/2		
Business English			1	40								
English 12							1/2	2	B	1/2		
Dramatics			1	40								
Journalism			1	40								
Speech I (Public, Radio and Television)			1	40								
Speech II (Dramatics)			1	40	1/2	2	D			1/2		
SOCIAL STUDIES												
World History		11	1	40	63	F				1		
American History			1	40	70	E						
Principles of Democracy			1	40	71	E	1/2	2	D	1/2		
Current History			1	20								
Black History			1	20	1/2	2	B			1/2		
Psychology					1/2	2	C					
Geography			1	20	65	F						
			1	20								

SUBJECT												
MATHEMATICS												
General Mathematics		11	1	40	66	B				1		
Shop Mathematics			1	40								
Algebra I			1	40								
Algebra II			1	40								
Geometry (Plane & Solid)			1	40								
Trigonometry			1	20								
Analytical Geometry			1	20								
Advanced Mathematics V			1	40								
Senior Bureau Arithmetic			2	40								
Gen. Math II			1	40	62	1	F					
Gen. Math I							1/2	2	F			
SCIENCE												
General Science I			1	40	66	B				1		
Physical Science II			1	40								
Biology I			1	40	1/2	2	C			1/2		
Biology II			1	40								
Chemistry			1	40								
Physics			1	40								
FOREIGN LANGUAGE												
French I			1	40								
II			1	40								
III			1	40								
IV			1	40								
V			1	40								
German I			1	40								
II			1	40								
III			1	40								
IV			1	40								
V			1	40								
Latin I			1	40								
II			1	40								
III			1	40								

*Write E for honors (also honors or H for modified). Leave blank if regular

Exhibit 9 C continued

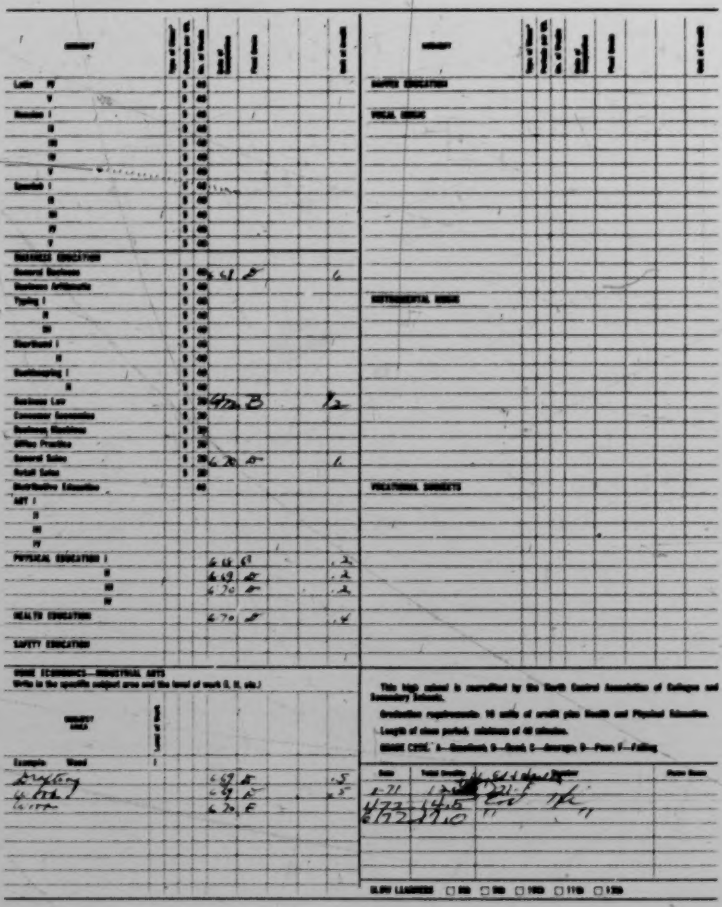


Exhibit 9 C continued

TRANSCRIPT RECORD

DATE	SENT TO	COMMENTS
10/6/72	Attorney Kennedy	Withdrawn & Ohm

CUMULATIVE PERSONAL RECORD

Columbus, Ohio, Public Schools (To follow pupil) Beh 21

NAME Harris (LAST) Bruce (FIRST) (MIDDLE) (M) F (SEX)

HOME ROOM 211 L16 211 106

GRADE LEVEL 7 8 9 10

PROMOTED FROM Highland ELEMENTARY SCHOOL—DATE 6-65

GRADUATED FROM JUNIOR HIGH SCHOOL—DATE June 1966

GRADUATED FROM SENIOR HIGH SCHOOL—DATE

IN CASE OF EMERGENCY NOTIFY: (If Parent Not Available)

NAME Mrs. Lenard PHONE 276-3[illegible]

ADDRESS [illegible] Avenue

NAME

ADDRESS PHONE

(Note: Use Pencil For Above)

HONORS AND RECOGNITIONS

SCHOOL	DATE	RECOGNITION
N. Linden	66-67	Most Valuable Team Track Team
West	'69	Jackets
West	'69	Football, Columbus Jr. Olympics
West	69	Football

EXTRA-CURRICULAR ACTIVITIES

SCHOOL	DATE	ACTIVITY
Westmore	66-67	Track Team
J.H. Nock	67-68	High 'Y'
West	'69	Varsity "W"
West	70	Varsity "W"

PUPIL'S EMPLOYMENT (Part-Time & Vacation)

DATE	KIND OF WORK	REASON*	REMARKS
	Industry	B	

*"A" Home needed funds, "B" Spending money, "C" Parent desire, "D" Student afford it, "E" Work practice experience, "F" Other

OUT-OF-SCHOOL ACTIVITIES

DATE	
66-67	Y.M.C.A.
'69	Summer League Baseball
'68	Life Guard

Exhibit 9 C continued

Exhibit 9 C continued

RESIDENTIAL DATA

SCHOOL		DATE ENTERED	DATE WITHDREW	REASON	RESIDENCE	PHONE	RECEIVES WITH (LAST/FIRST/MIDDLE)	TUITION TYPE	NON-RESIDENT STATE	NON-RESIDENT COUNTY
Highland	Elem	9-68	6-75	Res. From [illegible] To W Lee	4982 Upsetstreet	226-[illegible]	Harold			
[illegible]	Junior	7-A	6-72							
	Junior									
	Junior									
	Junior									
West Memorial Franklin	Senior	9-75	8-76	To Mrs. P [illegible]	1776 Wentford Ave		Dalton			
	Senior	9-76	[illegible]	[illegible]						
	Senior									
	Senior									

PARENTAL DATA

	NAME (LAST / FIRST / MIDDLE)	MARITAL STATUS	OCCUPATION	BUSINESS ADDRESS	BUSINESS PHONE	FOREIGN BORN
FATHER	[illegible] Frank Edwards	M	Laundry Worker		226-[illegible]2	
MOTHER (Maiden name)	[illegible]	D				
STEP-PARENT						
GUARDIAN						

ATTENDANCE DATA

SCHOOL	GRADE LEVEL	DATE ENTERED	TIMES TARDY	DAYS PRESENT	DAYS ABSENT	NATURE OF ABSENCE*	COMMENTS REGARDING HOME COOPERATION
Highland	6	9-62	4	166	16	I	
[illegible]	7	[illegible]	1	[illegible]	15	I	
[illegible]	8	8-66	11	168	14		
[illegible]	9	9-67	4	173	34	I	
Edw	10	9-68	4	82	9		
West	11	8-69	2	77	5		
"	11	9-70	12	171	7		
"	11	6-71	20	179	13		
[illegible]	12	9-72	[illegible]	142	40		

*Nature of Absence Code: use for 15 or more days; several numbers may apply
1. Illness 3. Personal Illness 5. Truancy 7. Suspension
2. Conference 4. Family Illness 6. Out of Town 8. Infant

COUNSELING RECORD*

DATE	TYPE	COUNSELOR

*Type of Counseling Code:
1. Educational 3. Personal
2. Vocational 4. Other

Exhibit 9 C continued

TEST DATA

INTELLIGENCE

	DATE	GRADE LEVEL	NAME OF TEST	FORM	TYPE	CA	MA	VERB.	I.Q. NON VERB.	TOTAL	% TILE
ELEM.	4 30 64	6	Stanford Binet							79	
SECONDARY	10-66	B	Wech-Bell	A	GR	14-1				78	

ADDITIONAL TESTS RESULTS - COMMENTS

OTHER STANDARDIZED TESTS

	DATE	GRADE LEVEL	TYPE	NAME OF TEST	FORM	CITY WIDE YES	CITY WIDE NO	RESULTS
ELEM.	3 1 63	6	Read	Stanford	1	✓		Average Grade 5.3
	"	6	Arith		Y			4.5
SECOND.	4-64	8	Read	Calif Achiev	W	✓		Read 5.7 Sp 5.3
	12-66	8	Arith	Calif Achiev	X	✓		5.6 7.3 5.1

PERSONALITY TRAITS

	6	7	8	9	10	11	12
INITIATIVE							
Merely conforms							
Seldom initiates					✓	✓	
Frequently initiates							
Self-reliant			X				
Actively creative							
WORK HABITS							
Seldom produces	✓						
Works only under pressure					✓	✓	
Needs occasional prodding			X				
Consistently prepared							
Seeks additional work							
INFLUENCE AND LEADERSHIP							
Negative							
Co-operative but retiring						✓	
Contributing in minor affairs			X		✓		
Contributing in important affairs							
Judgment respected - makes things go							

	6	7	8	9	10	11	12
CONCERN FOR OTHERS							
Indifferent	✓						
Self-centered							
Somewhat socially concerned		X		✓		✓	
Generally concerned							
Deeply concerned							
RESPONSIBILITY							
Irresponsible							
Somewhat dependable	✓	X		✓		✓	
Usually dependable							
Conscientious							
Assumes much responsibility							
EMOTIONAL STABILITY							
Unresponsive							
Excitable							
Usually well-balanced		X		✓		✓	
Exceptionally stable							

	6	7	8	9	10	11	12
ATTENTION TO SCHOOL REGULATIONS							
Actively opposes regulations							
Indifferent	✓	X					
Usually cooperates					✓		✓
Follows regulations conscientiously							
An exemplary school citizen							
PERSONAL APPEARANCE AND DRESS							
Generally inappropriate							
Tendency to follow extreme trends							
Usually tidy		X		✓		✓	
Neat and dressed in good taste							
Exceptionally attractive appearance							
ADDITIONAL COMMENTS							

ELEMENTARY SUMMARY

NAME Harris (LAST) Bruce (FIRST) (MIDDLE) (M) F (SEX) From Highland Elementary School

BIRTHPLACE Nasm City or County Mason W. Va. (STATE) BIRTH DATE 9 (MO.) 13 (DA.) 51 (YR.) VALIDATION Birth cert

GENERAL ACADEMIC RATING

Excellent	
Above Average	
Average	
Below Average	
Poor	✓

SPECIAL APTITUDES

HEALTH DATA

Asthma		Heart	
Brain Damage		Hernia	
Crippled		Kidney	
Diabetes		Rheumatic Fever	
Epilepsy		Speech	
Hearing		Vision	

SPECIAL RECOMMENDATIONS

EXTRA-CURRICULAR ACTIVITIES, RECOGNITIONS

SERIOUS ILLNESS—ACCIDENTS

	DATE		DATE

NOTE: The elementary school will provide test data, parental data and initial information on pages 2 and 3 as indicated.

ADDITIONAL INFORMATION (to be dated and signed)

ELEMENTARY

SECONDARY

IMMUNIZATIONS

TYPE		DATE
Smallpox		1960
D.&T.	1.	
	2.	
	3.	1960
	B.	1963
Polio	1.	
	2.	1960
	3.	
	Sabin	1963

Exhibit 9 C continued

EXHIBIT 10 A

COLUMBUS PUBLIC SCHOOLS
270 East State Street, Columbus, Ohio 43215

Dear

Please be advised that your son, daughter, , has been expelled from further school attendance under the authority of Section 3313.66 Ohio Revised Code, for

at High School on , 197 .

This expulsion will continue in effect for the remainder of the current semester.

It must be understood that during the period of this expulsion, shall not be present in any public school or on the school grounds or in the school building of any school of the Columbus City School District.

You are further advised that under the authority of Section 3313.66 Ohio Revised Code, you or your son, daughter have the right to appeal this expulsion at a meeting of the Columbus Board of Education.

You are also advised that at the end of the current semester, you may initiate the reinstatement of the above named student through the Department of Pupil Personnel of the Columbus City Schools.

We are sorry that this action is necessary, but we believe that it is the only course justified at this time.

Sincerely yours,

JOHN ELLIS
Superintendent of Schools

EXHIBIT 11

COLUMBUS PUBLIC SCHOOLS
270 East State Street, Columbus, Ohio 43215

Dear

I am sorry to hear of the regrettable incident involving your , at High School. Because of the severity of this problem Mr. , Principal at , has recommended that be expelled from school.

In accordance with required procedure in such a matter, this letter is official notice to you of a hearing of case. This hearing is scheduled for the Board of Education room at 270 East State Street at on , 197 .

Sincerely

NORVAL GOSS, *Director*
Pupil Personnel

EXHIBIT 12

ADMINISTRATIVE GUIDE
Section 1010—DISCIPLINE OF PUPILS

1010.01—Disciplinary measures shall be reasonable and appropriate to the nature of the misbehavior of the offending pupil and in accordance with the holdings of Ohio courts of law.

1010.02—Although no staute makes a specific mention of corporal punishment, Ohio courts have held that a teacher or principal may administer such punishment. In the Columbus Public Schools, corporal punishment may be used as a last resort and after all other means of punishment have proved ineffectual. Corporal punishment must be administered in the presence of at least one adult witness.

1010.03—Under no circumstances shall punishment be cruel or excessive or administered from malice or passion.

1010.04—Pupils may be suspended or expelled from school in accordance with the provisions of Section 3313.66 of the Revised Code.

EXHIBIT 13

COLUMBUS PUBLIC SCHOOLS
Policy Statement on Discipline

The belief that the Columbus Public School System has a responsibility to teach proper behavior patterns is based on the following premises:

1. The school must provide educational opportunities so every child may achieve to his fullest potential and become a contributing citizen in a democracy.

2. The child is a social being and as such must learn to recognize that certain types of behavior are necessary in a democratic society. Disciplined behavior is a basic need of such a society.

3. Discipline is a developmental need of each pupil. There is a feeling of security if limits are known to pupils and they live within appropriate limits.

4. Discipline has two major purposes: 1) securing a classroom atmosphere conductive to maximum educational achievement; 2) helping each pupil develop self control.

5. The development of an educational environment conducive to learning and individual self control is delegated to the school by society as its agency for perpetuating and improving the democratic way of life. Thus good discipline is a legitimate task and assigned responsibility of the school.

From these premises the following areas of responsibility develop:

Responsibility of the Pupils

Pupils shall accept the authority which has been delegated to the school by society.

Pupils shall respect those rules and regulations necessary for the orderly operation of the school and growth in citizenship.

Pupils shall respect school property, the rights of others, and the opinions of others. They must learn to accept the consequences of their decisions and behavior.

Pupils shall dress and groom themselves in a manner which will not infringe upon an atmosphere conducive to learning, and for the same reason shall maintain habits of personal cleanliness.

Pupils shall strive to develop habits of self-discipline that they may make positive contributions to the society in which they live.

Pupils shall behave in such a way that they will bring credit to themselves and their school.

Responsibility of Teachers

Teachers shall regard each pupil as an individual worthy of respect and dignity and shall help each pupil learn to regard himself in this manner.

Teachers shall present a program of instruction that will enable each pupil to achieve his full academic and social potential in each area of study.

Teachers shall help each pupil to understand the nature of acceptable and unacceptable behavior in the development of the desired goal: self-discipline.

Teachers shall set an example of acceptable behavior with respect to dress, grooming, coiffure, speech, and manners.

Teachers shall work with administrators and other staff personnel to promote a climate conducive to learning and achievement in the school.

Teachers shall accept responsibility for knowing and enforcing the rules and regulations of the school.

Responsibility of the Principal

The principal shall work with his staff to create an environment conducive to learning.

The principal shall involve the staff of specialized personnel, including school psychologists, school counselors, attendance officers, and health personnel, in dealing with individual and group behavioral problems.

The principal, with the advice of the staff, shall develop school rules and regulations that will encourage pupils to develop acceptable patterns of social behavior.

The principal, with the advice of the staff, shall develop school rules and regulations that will encourage pupils to develop acceptable patterns of social behavior.

The principal shall consider initiating a student advisory group to aid in the implementation of school rules and regulations.

The principal, by virtue of his position of authority, shall keynote the approach to good discipline in his school. In this vital area of school affairs, he and his staff shall work cooperatively on problems of behavior. The administrator may deem it best to use forms of punishment not available to the teacher, such as corporal punishment or suspension. The final decision on the appropriate form of punishment to be employed rests with the administrator, since such responsibility has been delegated to him by the Board of Education.

EXHIBIT 14

TO: ALL PRINCIPALS
FROM: NORVAL GOSS, PUPIL PERSONNEL
DATE: JULY 10, 1973
SUBJECT: SUSPENSION

Section 3313.66 of the Ohio Revised Code states that:

> "the principal of a public school may suspend a pupil from school for not more than ten days. Such — principal shall within twenty-four hours after the time of — suspension, notify the parent or guardian of the child, and the clerk of the Board of Education in writing of such — suspension including the reasons therefore."

In order to assure full compliance with this important section of the Revised Code; to guarantee that each pupil is treated equally and fairly, and further to assure consistency in the administrative practices in our schools, guidelines have been established which are to be followed in all cases where a student is suspended from school.

A. **Grounds for suspension**

1. Violation of any City of Columbus ordinance of state or federal law; and

2. Violation of written school rules or Board of Education regulations; and

3. Activities which interefere with or threaten the orderly functioning of school activities including classroom, extra-curricular and athletic activities; and

4. Any activity which is grounds for expulsion. This shall include, but not be limited to assault on a teacher, arson, or destruction of school property, active leadership in school disruption and direct refusal to follow a direct order from an administrator in time of school tension.

B. **Suspension Procedures**

1. Whenever an incident occurs that may lead to a suspension, the principal or assistant principal shall investigate the nature of the alleged offense before commencing suspension procedures. Unless the pupil is unavailable or unwilling to discuss the incident with the principal, this investigation shall include a discussion with the pupil so that the pupil may be given an opportunity to be heard with respect to the alleged offense.

2. If the principal determines that grounds for suspension do exist, he shall notify the pupil of the exact reason and length of the suspension and further inform the pupil that the suspension means he must stay off school property and away from school-sponsored activities during the entire term of the suspension.

3. Notify the parent or guardian of the suspension, by phone if possible, and explain the reason and length of the suspension. Except in cases of disruption where circumstances make it vital that one or several pupils be removed from the school property immediately because of a threat to the safety of other pupils, faculty or school property, no pupil shall be released from school during

the school day without notifying the parent or guardian in person or by phone.

4. The parent or guardian shall be provided an opportunity to attend a conference with the principal, to review the reasons for the suspension.

5. Within 24 hours after the incident leading to the suspension, a letter shall be written to the parents or guardian which shall include the reason for and term of the suspension and that a conference with the principal will be arranged, at mutual convenience, at the earliest possible time. A carbon copy of this letter, together with relevant information regarding the suspension, shall be sent to Pupil Personnel (designated agent of Clerk of Board of Education).

6. In the event that any suspension is subsequently found to be erroneous, all references to the suspension shall be expunged from the school records.

7. At the conclusion of a suspension it is the responsibility of the principal to see that the pupil is informed that the suspension is terminated and he is eligible to return to school.

Approved: C. L. Dumaree

DEFENDANTS' EXHIBIT B

	1967-68		1968-69		1969-70		1970-71		1971-72		1972-73		
	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Final point average
Byars, Clarence			5.9	2.70	5.7	2.67	5.1	2.63	4.0	2.00			2.559
Cooper, Susan			4.7	1.98	5.7	1.91	5.1	1.80	2.5	2.20			1.933
Cromie, Betty							(2.8)	.79	(2.2)	.71	4.2	1.00	
Fox, Deborah					4.7	2.04	5.7	1.91	5.0	1.36	1.5	3.66	2.087
Harris, Bruce	4.2	1.33	3.2	.76	2.6	.63	2.5	1.17	4.0	1.89			1.074
Lopez, Dwight	4.2	1.33	.2	.04	5.6	.85	3.0	1.66	4.0	2.11			1.037
Smith, Carl	4.7	1.19	1.0	.19	4.2	1.09	2.7	1.90	4.4	1.77			1.258
Sutton, Rudolph	4.2	1.57	5.9	1.68	4.6	2.28	4.0	1.75					1.818
Washington, Tyrone	4.8	2.00	3.7	1.40	4.2	2.00	5.5	2.09					1.861

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Filed July 17, 1973

(Title omitted in printing)
Civil Action No. 71-67

MOTIONS OF ALL DEFENDANTS

Motion to Dismiss for Failure to Establish That Plaintiffs Have Been Deprived of A Federal Right and for Failure to Establish By the Requisite Degree of Proof That Section 3313.66, Revised Code, Is Unconstitutional.

All defendants at the close of plaintiffs' evidence for to formally enter an order dismissing the above action which has now been concluded for the reasons that:

1. Plaintiffs have not established that they have been deprived of a Federally protected right or right specifically guaranteed by the Fourteenth Amendment to the United States Contsitution; and

2. Plaintiffs have not established by the required degree of proof that Section 3313.66 of the Ohio Revised Code is unconstitutional and they are therefore not entitled to an injunction enjoining the operation of the statute as being unconstitutional.

THOMAS A. BUSTIN, *Trial Attorney*
DALE A. CRAWFORD, *Of Counsel*
Attorneys for Defendants
City Hall—90 W. Broad Street
Columbus, Ohio 43215
Phone: 614/461-7460

MEMORANDUM

All defendants at the close of plaintiff's evidence formally made a motion to dismiss the above action. These defendants now reduce that motion to writing, and submit the same to this Court together with the previous motion which all defendants filed herein, wherein they requested that plaintiffs be placed upon their burden of proof.

The instant action was prosecuted as an action under 42 U.S.C., Section 1983, for the deprivation of a right guaranteed by the United States Constitution. It cannot be questioned but that the burden rests on plaintiffs in bringing such an action to establish that the defendants involved acted under color of law in such a manner as to deprive the plaintiffs of a Federally protected right or a right guaranteed by the Constitution. *Beaumont v. Morgan*, 427 F. 2d 667, at 670 and *Chism v. Price*, 457 F. 2d 1037 at 1039. Plaintiffs may not use 42 U.S.C. Section 1983 for the purpose of redressing rights guaranteed to them only by State law. *Charters v. Shaffer*, 181 F. 2d 764.

Reviewing the evidence submitted in the instant case, it is quite apparent that the only evidence before the Court at this particular time is evidence that the suspensions involved were suspensions which arose out of a period of stress and a period of disruption. Three plaintiffs testified and the substance of their testimony corroborates the fact that their suspensions arose out of periods of disruptions. That testimony is further substantiated by the testimony of Principal Philip Fulton which was submitted by defendants. No other evidence of any other type of suspension is before the Court as a result of the evidentiary hearing held on July 16, 1973. Further, examination of the plaintiffs' cumulative record

which has been submitted into evidence together with defendants' Exhibit B, which is a compilation of the school work by each of the individual plaintiffs, will not support a conclusion that any of these particular plaintiffs sustained any harm as a result of the suspension given anyone of them in either February, March or April of 1971. In fact, an examination of defendants' B, which was admitted into evidence will show that these plaintiffs' grade and point hours remain very consistent throughout the entire progress of their education through the Columbus Public School system. In addition, the testimony of at least one of the plaintiffs on July 16, 1973, indicated that she graduated prior to the time that she normally would have graduated or prior to the time that she would normally have been expected to graduate. Further examination of their cumulative records in relation to defense Exhibit B will disclose that several of the plaintiffs, Dwight Lopez, being one, had prior academic problems at the school during which time they earned so few credits that their graduation from school was delayed by reason of the fact that during one particular school year, namely, the school year 1968-69, they earned so few credits that it took them another school year in order to permit them to pick up the necessary credits that they needed in order to graduate. Specifically, if this Court will check defendants' Exhibit B, which has been admitted, for plaintiff Dwight Lopez, who testified during the course of the hearing, you will find that for the school year 1968-69, Dwight Lopez earned only two-tenths of a credit. Defendant Norval Goss testified that it takes 17 credits to graduate from high school and therefore it is quite easy to ascertain that if Mr. Lopez had any delay in graduating it was due solely to the fact that he earned so few credits dur-

ing the school year 1968-69. Plaintiffs presented no evidence such as would support a conclusion that a right of liberty or property is involved in this particular case. In other words, plaintiffs have not presented evidence such as discloses first and foremost that this Court is involved with a right of liberty or property such as is cognizable under the Fourteenth Amendment to the United States Constitution. *Morrissey v. Brewer*, 33 L. Ed. 2d 484; *Board of Regents v. Roth*, 408 U.S. 564 and *San Antonio Independence School District v. Rodriquez*, 41 U.S. L.W. 4407. The evidence or testimony submitted by the two psychologists and school guidance counselor called by plaintiffs does not serve to enable and to demonstrate that a right of liberty or property is involved. In fact, that testimony to which defendants objected and moved to strike is based wholly upon assumptions unsupported by any factual data actually in evidence. None of the psychologists or the school guidance counselor examined or talked to the plaintiffs or examined their cumulative school records. In fact, a study of the evidence relating specifically to each plaintiff, together with the opinions expressed by the psychologists and guidance counselor show the evidence to be in conflict, since there is no evidence any of the so-called harms were actually sustained by any single plaintiff. In fact, a conclusion that they sustained no harm is quite supportable. Therefore, their opinions concerning the effect of suspension are opinions which rest wholly on the total absence of a supportive factual background, and they are therefore entitled to no weight. Those opinions would have been perfectly proper before a legislative body arguing for a change in the law.

All defendants herein previously on May 25, 1973 filed a motion in which they requested that plaintiffs be

placed upon their burden of proof. This Court now has this motion under consideration and by this written motion defendants wish to indicate to the Court that they fully rely on that motion. The plaintiffs in this case attack Section 3313.66 of the Ohio Revised Code as being unconstitutional and ask this Court to grant an injunction enjoining the operation of that statute. In making the challenge to the statute, given the fact that the statute enjoys a presumption of constitutionality, the plaintiffs in this case had a heavy burden of proof to establish that the same was unconstitutional. *San Antonio Independence School District v. Rodriquez*, 36 L. Ed. 2d 16; 16 Am. Jur. 2d, Constitutional Law, Sec. 172, 173, 174 and 175. All defendants herein submit that the total factual evidence submitted by plaintiffs does not meet the required burden of proof of establishing that Section 3313.66 of the Ohio Revised Code is unconstitutional.

For the above reasons, all defendants herein respectfully request that the motion to dismiss which they made at the close of plaintiffs' evidence be granted for the reasons stated in this written motion.

Respectfully submitted,
THOMAS A. BUSTIN, *Trial Attorney*
DALE A. CRAWFORD, *Of Counsel*
Attorneys for Defendants
City Hall, 90 West Broad St.
Columbus, Ohio 43215
Phone: 614/461-7460

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Filed August 31, 1973

(Title omitted in printing)
Civil Action No. 71-67

AMENDED COMPLAINT

1. This is an action for injunctive and declaratory relief authorized by Title 42 U.S.C. Section 1983 to secure rights, privileges and immunities established by the First and Fourteenth Amendment to the Constitution of the United States.

JURISDICTION

2. The jurisdiction of this Court is invoked under Title 42 U.S.C. Section 1343(3) providing for original jurisdiction of this Court in suits authorized by Title 42 U.S.C. Section 1983 and under Title 28 U.S.C. Sections 2201 and 2202 relating to declaratory judgments.

3. Plaintiffs respectfully request that a three-judge Court be convened pursuant to Title 28 U.S.C. Section 2281 in that plaintiffs seek to enjoin the enforcement of State Statute by an officer of the State on the grounds that said statute and its implementation violate the Constitution of the United States.

CLASS ACTION

4. Plaintiffs bring this action on their own behalf and on behalf of all other students residing in the City of Columbus who are similarly situated and affected by the policy and usage complained of herein. The mem-

bers of the class on whose behalf plaintiffs sue are so numerous as to make it impracticable to bring them all individually before this Court. There are common questions of law and fact involved and plaintiffs' claim is typical of the claim of the entire class. Plaintiffs fairly and adequately represent and will protect the interest of the class. Defendants have acted on grounds generally applicable to plaintiffs' class. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

DEFENDANTS

5. Defendant Norval Goss is the Director of the Department of Pupil Personnel of the Columbus Public Schools.

6. Defendant James Furgason is the Principal and Chief Administrative officer of Central High School.

7. Defendant James Boster is the Principal and Chief Administrative officer of Marion-Franklin High School.

8. Defendant John Mulherin is the Principal and Chief Administrative officer of McGuffey Junior High School.

9. Defendant John Ellis is Superintendent of Schools of the Columbus Public Schools and is the Executive and Administrative officer of the Columbus Board of Education pursuant to Section 3301.11 of the Ohio Revised Code.

10. Defendant Columbus Board of Education is and was at all times material hereto entrusted with the

management and control of all matters relating to the Columbus Public Schools pursuant to Chapter 3313 of the Ohio Revised Code. Defendants Virginia Prentice, Thomas Moyer, Marilyn Redden, Marie Castleman, David Hamlar, Paul Langdon, and Watson Walker are the present members of the Board of Education.

CLAIM OF DWIGHT LOPEZ

11. Mrs. Eileen Lopez is the parent and natural guardian of Dwight Lopez, a minor, 19 years of age on whose behalf she has filed suit. Dwight Lopez is in the 12th grade at Central High School.

12. Lopez was suspended without prior hearing on the 26th of February by Calvin Park then principal of Central High School. Lopez was advised of the suspension in writing by a letter mailed to him and received February 27, 1971. No return date was fixed in his suspension. On March 1, 1971 Mr. and Mrs. Lopez were advised that they would have to appear at the Board of Education before Dwight Lopez could return to school.

13. On March 5, 1971 the School Board acting through Herbert M. Williams then Director of Pupil Personnel delivered a letter to Mr. and Mrs. Lopez advising them to appear March 8, 1971 at 8:30 A.M. Because of a demonstration being conducted at the Board of Education offices that morning neither Dwight or Mr. and Mrs. Lopez appeared at the Board as scheduled. Dwight Lopez has not been advised of the complete and specific reasons for his suspension, and no hearing has been held concerning being readmitted to Central High School, and he is being denied an opportunity to continue his education there.

14. Following March 8, 1971 Mrs. Lopez called the School Board on several occasions, as did her daughter, Alma Robinson, but no new date was set for hearing.

Mrs. Robinson thereafter wrote to the School Board on March 22, 1971 and by letter dated March 25, 1971 received March 26, 1971 from defendant, H. M. Williams, Mrs. Lopez was advised that since Dwight had missed his appointment March 8, 1971 and had made no attempt to make a new appointment, he was granted permission to report to the adult day school at Nelson Road.

15. To the date of the filing of this Complaint no hearing has ever been held in Dwight Lopez's case and he has not been advised in writing the reason for his suspension or expulsion from the regular day school of Central High School.

CLAIM OF BETTY JEAN CROME

16. Mrs. Martha Jean Adams is the parent and natural guardian of Betty Jean Crome, a minor, 13 years of age.

17. Betty Jean Crome was suspended from school by Frank Mason then principal of McGuffey Junior High School. The plaintiff Betty Jean Crome was suspended from McGuffey Junior High School, where she is a student in the 7th grade on the 8th day of March, 1971 without prior hearing. Betty Jean Crome was advised that she was to report to school with her mother on March 15, 1971. Mrs. Adams was unable to be with her daughter on readmission however and that requirement was relaxed.

18. Betty Jean Crome was readmitted to school on the 15th day of March and no hearing was held on the reasons for suspension and said suspension has become part of her permanent school record.

CLAIM OF RUDOLPH R. SUTTON

19. Floyd Sutton is the parent and natural guardian of Rudolph Sutton, a minor 19 years of age on whose

behalf he has filed suit. Rudolph Sutton is a student at Marion-Franklin High School in the 12th grade.

20. Rudolph Sutton was suspended from school on the 15th day of March, 1971 for a period of 10 days. By letter dated March 16, 1971 Rudolph Sutton was notified that he was suspended until March 25, 1971 and that the Pupil Personnel Department would notify him of further disposition of his case in a letter sent by Oscar Gill acting for Fulton then Principal of Marion-Franklin High School.

21. No hearing was ever held in the Sutton case and on the 25th day of March upon returning to Marion-Franklin, Rudolph Sutton, and his mother who accompanied him, were advised that they would receive a letter in the mail concerning his case.

22. A letter dated that March 25, 1971 advised Mr. and Mrs. Sutton that their son was "to report to South High School for balance of 1970-71 school year. (adjustment)" The letter was signed by H. M. Williams then Director of Pupil Personnel. Plaintiff Rudolph Sutton has never requested a transfer from Marion-Franklin High School and no hearing or reason in writing were given to Sutton prior to said notice of transfer. Rudolph Sutton believes said suspension have become part of his permanent school record.

CLAIM OF TYRONE WASHINGTON

23. Mrs. Dollie Vance is the parent and natural guardian of Tyrone Washington, a minor 18 years of age on whose behalf she has filed suit.

24. Tyrone Washington on the 15th day of March, 1971 was a student at Marion-Franklin High School from which he was suspended for a period of ten days. In a letter dated March 16, 1971 the parents of Tyrone Wash-

ington were advised of the suspension and that "The Pupil Personnel Department of the Columbus Board of Education will notify you concerning a disposition of your case". No hearing was held prior to or subsequent to suspension.

25. By letter dated March 23, 1971 Tyrone Washington parents were notified that he had been summarily transferred to Mohawk Junior High School for the balance of the school year. No transfer had been requested and no hearing has been held concerning said transfer. Tyrone Washington believes said suspension and transfer has become a permanent part of his school record.

CLAIM OF SUSAN C. COOPER

26. Mrs. M. Katherine Cooper is the parent and natural guardian of Susan C. Cooper, a minor 16 years of age on whose behalf she has filed suit. Susan C. Cooper is a student at Marion-Franklin High School.

27. Susan Cooper was suspended from school without prior hearing for a period of ten days on March 15, 1971. On March 17, 1971 Mrs. Katherine Cooper received a letter from Oscar R. Dill acting on behalf of Fulton then principal of Marion-Franklin High School. No hearing was held prior to March 25, 1971 concerning said dismissal. By letter of March 16, 1971 Mrs. Cooper was advised of an 11:00 A.M. conference in Mr. Gill's office on the date of Susan's return. Susan Cooper believes said suspension will become part of her permanent record.

CLAIM OF DEBORAH KAY FOX

28. Mrs. Delores Young is the parent and natural guardian of Deborah Kay Fox, a minor 16 years of age on whose behalf she has filed suit. Deborah Kay Fox is

a student at Marion-Franklin High School in the 10th grade.

29. On the 10th day of March, 1971 Deborah Kay Fox was suspended from school without prior hearing for a period of ten days. On the 11th day of March, 1971 Mr. and Mrs. William Young were advised of the suspension of Deborah Kay Fox until Friday, March 19, 1971. On March 19, 1971 when she attempted to return to school, Deborah Kay Fox was suspended until March 29, 1971 or "until contacted by Mr. Robert Carter or his representative regarding your daughter's school placement". Miss Fox was advised personally by Mr. Kollmer, as agent for the principal that she was not to return to Marion-Franklin.

30. No hearing has ever been held concerning said suspension and neither Deborah Kay Fox or her parents have ever requested a transfer. Miss Fox believes the suspensions she has received have become a permanent part of her school record. Miss Fox was advised on March 29th that she has been transferred to South High School.

CLAIM OF CLARENCE L. BYARS

31. Mrs. Barbara Byars is the parent and natural guardian of Clarence L. Byars, a minor 16 years of age. Clarence L. Byars is in the 11th grade at Marion-Franklin High School.

32. On the 15th of March, 1971, Clarence L. Byars was suspended from school for a period of 3 days. On the 17th day of March, 1971 the parents of Clarence L. Byars were advised that Clarence was suspended and that he was to return to school on the 18th day of March, 1971. No hearing was held prior to his suspension and

Clarence Byars was not informed in writing of the reasons for his suspension until two days after it occurred and was never given an opportunity to contest said suspension. Clarence L. Byars believes said suspension will become part of his permanent school record.

CLAIM OF CARL SMITH

33. Mrs. Veda Smith is the parent and natural guardian of Carl Smith, a minor, 18 years of age on whose behalf she has filed suit. Carl Smith is a student in the 12th grade at Central High School. Carl Smith was suspended from Central High School by Calvin Park then principal, on the 26th day of February, 1971. Smith was advised of suspension on February 27, by letter. No definite date of return was given to the plaintiff Smith and he has been permitted to be in school only on one day since his suspension, March 9, 1971. Smith has been advised that he may not return to school until he talks to someone at the School Board, no hearing has been held in his case since suspension February 26, 1971. Carl Smith continues to be denied an opportunity to complete his schooling.

CLAIM OF BRUCE HARRIS

34. Freddie Robinson is the legal guardian and next friend of Bruce Harris on whose behalf he has filed suit. Bruce Harris is a minor, 18 years of age and a student in the 12th grade at Marion-Franklin Hign School.

35. On the 22nd day of March, 1971, Bruce Harris was suspended from Marion-Franklin High School by Oscar Gill, Assistant Principal. No hearing was held prior to his suspension and Harris was advised of the suspension by letter received March 24, 1971. The letter

advised Harris he was suspended until March 30, 1971 and that during the suspension "the Pupil Personnel Department of the Columbus School Board will review with you the contents of the letter of November 6, 1970".

36. When Harris returned to school on March 30, 1971, he was not readmitted and advised to make contact with the Pupil Personnel Department.

37. Harris remains out of school and believes said suspension will become part of his school record.

38. Defendants have acted pursuant to Section 3313.66 of the Ohio Revised Code, the Administrative Guide of the Columbus Public Schools, and the Policy Statement in Discipline of the Columbus Public Schools none of which provides any standards for the exercise of school administrators' disciplinary authority or fair proceedings through which a student has an opportunity to challenge the proposed disciplinary measure.

39. On information and belief, there are no other school rules or regulations relied upon by defendants as authorized aforesaid disciplinary actions.

40. Under color of State Law Defendants have acted intentionally, deliberately, and knowingly in violation of the First and Fourteenth Amendments to the Constitution of the United States and Title 42 U.S.C. Section 1983, rendering defendants liable to plaintiffs in law and equity.

CAUSE OF ACTION

41. Section 3313.66 of the Ohio Revised Code, Section 1010.04 of the Administrative Guide of the Columbus Public Schools, and the Columbus Policy Statement in Discipline provide no ascertainable standards of conduct for violation of which high school students may be sus-

pended and expelled. Said statute, administrative Guide, and Policy Statement are unconstitutional because their vagueness and overbreadth deprive students of rights secured under the First and Fourteenth Amendments to the Constitution of the United States.

42. Section 3313.66 of the Ohio Revised Code Section 1010.04 of the Administrative Guide of the Columbus Public Schools, and the Columbus Policy Statement in Discipline authorize the suspension and expulsion of high school students without prior notice and a hearing with such minimal rights as a written statement of the reasons for the proposal discipline, the right to cross-examination, the right to pre-hearing discovery procedure, the right to submit relevant evidence and the right to be represented by counsel. Said statute, administrative Guide, and Policy Statement are unconstitutional because their lack of procedural safeguards deprives students of rights secured under the Fourteenth Amendments to the Constitution of the United States.

43. In the instant case defendants have effected suspensions, expulsions, and involuntary transfers of students without prior hearings which comport with minimal standards of due process. Defendants actions have been arbitrary, unequal and discriminatory in violation of plaintiffs rights secured by the First and Fourteenth Amendments to the Constitution of the United States.

PRAYER FOR RELIEF

44. Wherefore, plaintiffs respectfully pray that this Court:

(1) Assume jurisdiction of this cause and convene a three-judge district court to determine the controversy pursuant to Title 28 U.S.C. Section 2281.

(2) Enter a preliminary and a final order pursuant to Title 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that Section 3313.66 of the Ohio Revised Code is unconstitutional.

(3) Enter a preliminary and a final order pursuant to Title 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the administrative Guide and the Policy Statement on Discipline of the Columbus Public Schools insofar as they relate to suspensions and expulsions are unconstitutional.

(4) Issue a preliminary and a permanent injunction restraining the defendant, their successors in office, agents and employees from further enforcement of the unconstitutional provisions of their discipline policy and Section 3313.66 of the Ohio Revised Code.

(5) Issue a preliminary and a permanent injunction ordering that plaintiffs' school records be expunged of any notation of the aforementioned suspensions and that plaintiffs be allowed to make up any school work or tests occurring during their absence from school.

(6) Maintain jurisdiction of this cause until such time as defendants establish a hearing procedure in conformity with the requirements of the Fourteenth Amendment to the Constitution of the United States.

(7) Award plaintiffs their costs and disbursements incurred herein together with such further alternative relief as may seem just and equitable.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Filed September 12, 1973

(Title omitted in printing)
Civil Action No. 71-67

ANSWER ON BEHALF OF SUBSTITUTED PARTIES Norval Goss, James Furgason, James Boster, John Mulherin, John Ellis, Virginia Prentice, Thomas Moyer, Marilyn Redden, Marie Castleman, David Hamlar, Paul Langdon and Watson Walker.

1. Defendants, Norval Goss, James Furgason, James Boster, John Mulherin, John Ellis, Virginia Prentice, Thomas Moyer, Marilyn Redden, Marie Castleman, David Hamlar, Paul Langdon and Watson Walker, substituted herein as parties-defendant without abandoning the motion to dismiss filed in this cause on April 19, 1971, and renewed both at the commencement and conclusion of the trial conducted on July 16, 1973, and relying on all other motions made either orally or in writing as a result of the trial held on July 16, 1973, file the following as their answer.

2. Defendants named above admit that the action is denominated an action for declaratory and injunctive relief as alleged in paragraph one of the complaint and that the jurisdiction of this Court is invoked as alleged in paragraph two of the complaint, but specifically deny that the facts alleged or submitted support the assertion of such jurisdiction.

3. Defendants admit that a three-judge Court has been convened to hear the instant cause.

4. By way of further answer, defendants deny the allegations contained in paragraph four of the complaint.

5. Defendants admit that Norval Goss is the Director of the Department of Pupil Personnel of Columbus Public Schools; that James Furgason is presently Principal of Central High School; that James Boster is Principal of Marion-Franklin High School; that John Mulherin is Principal of McGuffey Junior High School; that John Ellis is presently Superintendent of Schools of the Columbus Public School System and that the Board of Education acting as a political subdivision manages the Columbus Public School System.

6. Defendants by way of further answer admit that Dwight Lopez, age nineteen (19), a student over the compulsory school attendance age, was suspended from Central High School on February 26, 1971, admit that a letter dated February 26, 1971, was forwarded to the parents of Dwight Lopez, which letter advised his parents that Dwight had been suspended for being involved in a school disruption and requested that a conference be arranged with his parents. Defendants further admit that a letter was sent to Dwight's parents advising them to appear on March 8, 1971, at 8:30 a.m. for a conference but that the parents did not appear and defendants communicated by phone with Mrs. Lopez and were informed by Mrs. Lopez that they were organizing. Defendants deny that Dwight Lopez was ever denied an opportunity to continue his education, and specifically aver that he did continue his education and graduated from high school in June of 1972. Defendants further specifically aver that the only problems Dwight Lopez had while in school were academic, that during the school year 1968-1969, Dwight Lopez only earned two-tenths of a credit toward graduation. Defendants deny the allegation that Dwight Lopez was not given a reason or reasons for his suspension, and aver that several attempts were made

to set up a conference with Dwight's parents to discuss the suspension, all without success. Defendants admit that Dwight Lopez was transferred to Adult Day High School on March 24, 1971, and specifically aver that he graduated as stated herein and that the suspension had no demonstrated affect on the completion of his education.

7. By way of further answer, defendants admit that Betty Jean Crome was temporarily suspended from McGuffey Junior High School on March 3, 1971, and aver that Betty Jean Crome returned to school on March 9, 1971; that a letter dated March 3, 1971, was forwarded to the parents of Betty Jean Crome advising them of the suspension, the period that it was to run and advising them to appear on March 8, 1971, at the school for a conference relating to the suspension. Defendants deny the allegations contained in paragraph 17 and 18 of the complaint, and aver that Betty Jean Crome continued her education on schedule and has completed the ninth grade by the end of the 1972-1973 school year and that the suspension had no demonstrated effect on her education.

8. Defendants admit that Rudolph Sutton, age nineteen (19), a student over the compulsory school attendance age, was suspended from Marion-Franklin High School on March 15, 1971, admit that a letter dated March 16, 1971, was forwarded to the parents of Rudolph Sutton advising them of the suspension, the period that it was to run, and the reasons for such suspension, the reasons given being that he was involved in a school disturbance and refused to follow the directions of the principal. Defendants admit that Rudolph Sutton was transferred to South High School, deny the allegation that he was not advised of the reasons for his suspension,

and specifically aver that Rudolph Sutton and his father were present at the disturbance which led to his suspension and further aver that Rudolph Sutton graduated on schedule from high school in June of 1971, and that such suspension had no effect on the obtaining or completion of his education.

9. By way of further answer, defendants admit that Tyrone Washington was temporarily suspended from Marion-Franklin High School on March 15, 1971, such suspension to run until March 25, 1917, admit that a letter dated March 16, 1971, was forwarded to the parents of Tyrone Washington, which letter notified his parents of the suspension, the term of the suspension and gave as reasons his involvement in a school disturbance and his direct refusal to follow the directions of the school principal. Defendants further admit that Tyrone Washington was transferred to East High School and graduated on schedule from high school in June of 1971. Defendants further specifically aver that the suspension had no demonstrated effect on his obtaining or completing his education.

10. By way of further answer, defendants admit that Susan Cooper was temporarily suspended from Marion-Franklin High School on March 15, 1971, admit that a letter dated March 16, 1971, was forwarded to the parents of Susan Cooper advising them of the suspension, which suspension was to run until March 25, 1971, and advising them of the reasons for such suspension namely, her being involved in a disturbance at school and her showing disrespect for the principal during the disturbance which occurred at the school on March 15, 1917. Defendants further specifically aver that Susan Cooper continued with her education at Marion-Franklin High School, graduated from high school on schedule in

June of 1972 and that the temporary suspension admitted herein had no demonstrated effect on Susan Cooper's obtaining or completing her education.

11. Further answering, defendants admit that Deborah Kay Fox was temporarily suspended from Marion-Franklin High School on March 10, 1971, with such suspension to run until March 19, 1971, admit that a letter dated March 10, 1971, was forwarded to her parents advising them of the suspension, the term that it was to run and reasons, namely, engaging in defiant conduct and showing disrespect for the principal, admit that she was resuspended on March 19, 1971, as a result of conduct in the assistant principal's office, that one of her parents was present with her on March 19, 1971, that a letter dated March 19, 1971, was forwarded to her parents advising them of the resuspension and defendants further aver that both the suspension of March 10, 1971 and March 19, 1971, was discussed with Deborah Fox's parents. Defendants further admit that Deborah K. Fox was transferred to South High School, but aver that such placement was first discussed with Lorene Howard, field counselor for the Ohio Youth Commission, since Deborah K. Fox was under her supervision. Defendants further specifically aver that Deborah Fox graduated from high school in January of 1973, that such graduation was ahead of schedule and that the suspensions admitted herein had no demonstrated effect on her obtaining or completing her education.

12. By way of further answer, defendants admit that Clarence Byras was temporarily suspended from Marion-Franklin High School on March 15, 1971, admit that a letter dated March 15, 1971, was forwarded to the parents of Clarence Byras, advising them of the suspension, that the suspension was to run until March 18, 1971, and

giving the reasons for such suspension, namely, his being involved in a school disruption, his refusal to go to classes and his demonstrating disrespect for the principal. Defendants further specifically aver that Clarence Byras continued with his education at Marion-Franklin High School, graduated on schedule from high school in June of 1972, and that the suspension admitted herein had no effect on his obtaining or completing his education.

13. Further answering, defendants admit that Carl Smith, age eighteen (18), a student over the compulsory school attendance age was suspended from Central High School on March 1, 1971, that a letter dated March 1, 1971, was forwarded to his parents advising them of the suspension, but aver that phone calls were made to his parents on March 2, 3 and 4, 1971, to arrange a conference concerning the suspension, that a conference was arranged for March 5, 1971, and defendants were advised that Carl and his mother were on their way to keep the appointment but never appeared. Defendants deny that Carl Smith was ever denied an opportunity to complete his education, that Carl Smith graduated from high school in June of 1972, having had academic problems prior to his suspension. Defendants further specifically aver that the suspension has had no demonstrated effect on Carl Smith obtaining or completing his education.

14. By way of further answer, defendants admit that Bruce Harris, age nineteen (19), a student over the compulsory school attendance age, was temporarily suspended from Marion-Franklin High School on March 23, 1971, admit that a letter dated March 23, 1971, was forwarded to the parents of Bruce Harris, advising them of the suspension, the term of the suspension, namely March 30, 1971, and the reasons, namely, his being in-

volved in the disruption of an assembly and walking out of the assembly after the principal warned that such conduct would result in suspension. Defendants further aver that Bruce Harris graduated from high school in June of 1972, that such graduation was delayed due to previous academic problems, and that this suspension admitted herein had no demonstrated effect on Bruce Harris obtaining or completing his education.

15. Defendants by way of further answer admit that the provisions of Section 3313.66, Revised Code, proscribes the procedural conduct of defendants, and deny each and every other allegation contained in the complaint.

SECOND DEFENSE

16. Defendants aver that the complaint in its present form fails to state a claim cognizable under Title 42, Section 1983, fails to state a claim demonstrating that any single plaintiff has been denied a right of liberty or property guaranteed by the Fourteenth Amendment to the United States Constitution; that the provisions of Section 3313.66, Revised Code, are procedural in nature and do not proscribe or prescribe conduct engaged in by plaintiffs, but instead act as a limitation on the inherent power possessed by defendants, and that given the conduct engaged in by plaintiffs as alleged herein, given the temporary character of the action taken by defendants no substantial question with respect to the violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution exists in this case.

THIRD DEFENSE

17. Defendants aver that each plaintiff had an adequate administrative remedy available to him or her

through review of each temporary suspension by way of an appeal pursuant to Chapter 2506 of the Revised Code, that given the facts presented and the type of suspension involved such remedy would comport with any due process requirements, if the Due Process Clause was involved, and should have been pursued prior to bringing an action under Title 42, Section 1983.

FOURTH DEFENSE

18. Defendants aver that before the full procedural protection of the Due Process Clause to the Fourteenth Amendment of the United States Constitution does apply it must be shown that a right of liberty or property is involved and that a plaintiff or plaintiffs face deprivation of the right; that no right of liberty or property has been shown to be sharply implicated by reason of the operation of Section 3313.66, Revised Code, that the plaintiffs in the instant action have not been shown to be condemned to suffer a grievous loss by reason of the operation of Section 3313.66, Revised Code, and that by reason of the fact that no right of liberty or property is sharply implicated in the instant action and plaintiffs are not condemned to suffer grievous loss by reason of the operation of Section 3313.66, Revised Code, the procedural protections required by the Due Process Clause to the Fourteenth Amendment are not required and no process is due.

FIFTH DEFENSE

19. Defendants aver that education is not a fundamental right guaranteed by the United States Constitution, that education is a service and function provided by the State, that the Legislature of the State of Ohio has legislated with respect to the function and service of education and has determined that students may partici-

pate in the service of education subject to the limited power of discipline granted to the principal by Section 3313.66, Revised Code, that a legislative determination has been made in the formulation and development of the service, that the grant of limited power to the principal to discipline, as provided in Section 3313.66, Revised Code, will not damage or injure participation in the service or function and that further refinement or limitation of the power granted to the principal by Section 3313.66, Revised Code, is a legislative and not a judicial function.

SIXTH DEFENSE

20. Defendants aver that the Board of Education of the School District of the City of Columbus and the individual members named defendant who comprise the Board of Education are not persons subject to the provisions of Title 42, Section 1983, where equitable relief is sought, as in the instant case and, therefore, defendant, the Columbus Board of Education and those individual members named defendant who comprise the Board of Education, are not proper parties defendant and should be dismissed from the action.

SEVENTH DEFENSE

21. Defendants aver that the facts alleged and produced have not demonstrated that there occurs by reason of the operation of Section 3313.66, Revised Code, a constitutionally recognized stigmatization such as would entitle any plaintiff or plaintiffs as a whole to due process within the meaning of the Due Process Clause to the Fourteenth Amendment prior to the imposition of a ten-day suspension pursuant to Section 3313.66, Revised Code.

Wherefore, the defendants and each of them demand judgment dismissing the complaint, with costs.

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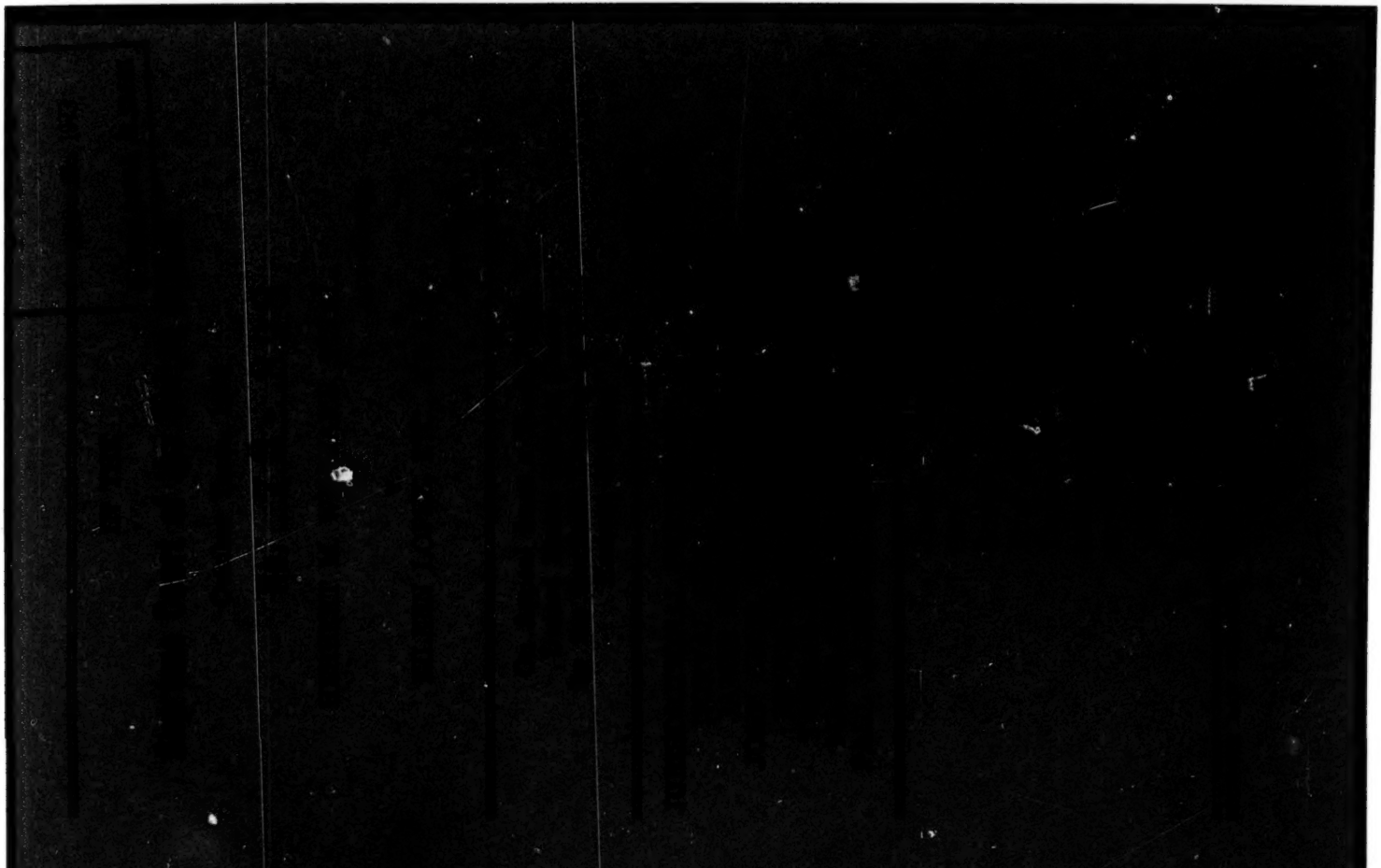

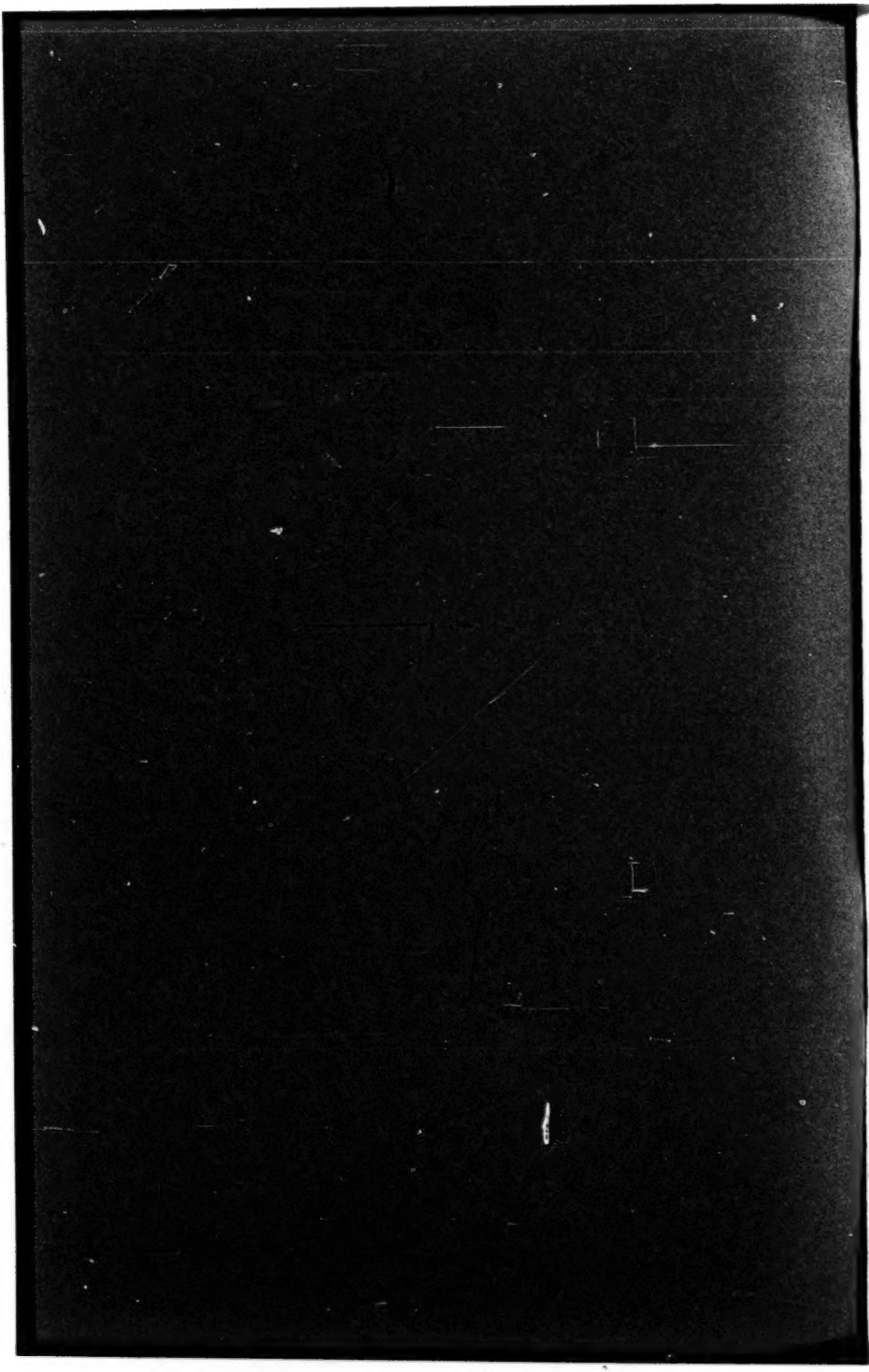

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IN THE

Supreme Court of the United States

October Term, 1973

No. _____

HERBERT M. WILLIAMS, ET AL.,
Appellants,

v.

EILEEN LOPEZ, ETC., ET AL.,
Appellees.

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

---

JURISDICTIONAL STATEMENT OF APPELLANTS NORVAL GOSS, JAMES FURGASON, JAMES BOSTER, JOHN MULHERIN, JOHN ELLIS, THE COLUMBUS BOARD OF EDUCATION, VIRGINIA PRENTICE, THOMAS MOYER, MARILYN REDDEN, MARIE CASTLEMAN, DAVID HAMLAR, PAUL LANGDON, AND WATSON WALKER

This appeal is from a final judgment rendered by the United States District Court for the Southern District of Ohio, Eastern Division, on September 17, 1973. The lower court declared Section 3313.66 of the Ohio Revised Code unconstitutional on its face because part of the statute authorized school principals to temporarily suspend students up to ten days without first having a hearing. The lower court concluded that the entire statute,

on its face, violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The lower court's judgment is set forth as Appendix A at page 18.

OPINION BELOW

The opinion filed by the Three-Judge District Court for the Southern District of Ohio, Eastern Division, has not yet been reported. That opinion is reprinted as Appendix B at page 20. The Notice of Appeal filed with the District Court is reprinted as Appendix C at page 67.

JURISDICTION

This action challenging the validity of Section 3313.66 of the Ohio Revised Code was heard by a three-judge court convened pursuant to 28 U.S.C. §2281. The judgment of the District Court was entered on September 17, 1973, and appellants filed their notice of appeal with the District Court on November 9, 1973.

The jurisdiction of this Court to review the judgment below by direct appeal is conferred by 28 U.S.C. §1253.

QUESTIONS PRESENTED

The questions presented by this appeal are:

1. Where the United States Supreme Court has concluded that the importance of education alone will not elevate education to the status of a fundamental right guaranteed either explicitly or implicitly by the Federal Constitution and where the lower court has recognized that education is not a property right, may a district court hold that education is a liberty protected by the Federal Constitution solely on the basis that it is important?
2. Is a statute, providing for a temporary limited suspension by a principal of a local school, which has not been determined to result in condemning students to suffer grievous loss subject to the

procedural protections required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

3. Can a State create a liberty which is recognized as being subject to protection by the Fourteenth Amendment of the United States Constitution?

STATUTE INVOLVED

The statute challenged in this litigation is Section 3313.66 of the Ohio Revised Code which restricts the right of a principal to suspend a student to from one to ten days only.

> "§3313.66 Suspension or expulsion.
>
> The superintendent of schools of a city or exempted village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall within twenty-four hours after the time of expulsion or suspension, notify the parent or guardian of the child, and the clerk of the board of education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester."

STATEMENT OF THE CASE

Appellees brought the instant action as a class action claiming relief bottomed on 42 U.S.C. §1983, challenging

the validity of Section 3313.66 of the Ohio Revised Code, claiming that such statute and the regulations propounded by appellants violated the Due Process Clause to the Fourteenth Amendment of the United States Constitution. The action arose as a result of a series of short suspensions which occurred during the early part of the year 1971 occasioned by disruptive activity in several schools located within the Columbus, Ohio, school system. Appellees requested that a three-judge court be convened to hear the action.

Appellants on April 19, 1971, filed a memorandum contesting the necessity for a three-judge court and a motion to dismiss the complaint.

A three-judge court was ordered convened by an order of the Chief Judge of the United States Court of Appeals for the Sixth Circuit filed October 4, 1971.

On April 7, 1972, at the request of the Court, appellants filed an answer to the complaint, appellants indicating in their answer that they were not abandoning the motion to dismiss they had previously filed. In their answer, appellants did not admit that the lower court had jurisdiction. No specific ruling on appellants' motion to dismiss was ever made.

Both appellants and appellees entered into a series of stipulations relating to the case, which stipulations admitted the fact of the suspensions and attached various exhibits. Those stipulations were filed on October 10, 1972. On January 26, 1973, a stipulation was filed by which both appellants and appellees stipulated that the case could be decided on the pleadings, motions, stipulations and exhibits which had been filed.

At a conference called by the Court on May 25, 1973, appellants were advised that the Court could not decide the case on stipulations that had been filed and that a trial would be necessary.

On May 25, 1973, following the conference, appellants

filed a motion to strike all stipulations requesting that appellees be placed on their burden of proof.

The cause was tried on July 16, 1973, during which time several appellees testified as well as several psychologists and a guidance counselor. Objection was made to the testimony of the psychologist and the guidance counselor, and a motion to strike such testimony was also entered. Appellants presented evidence by way of deposition and through its Director of Pupil Personnel. While appellants never disputed the fact of the suspensions, evidence was presented demonstrating that each student either graduated on time or ahead of time and that the suspension did not result in a change in the point hour each involved student was receiving or the credits the student was earning. (pp. 42 and 44, infra).

Following the trial, appellants on July 17, 1973, filed a formal motion to dismiss the case for failure on the part of appellees to establish that they had been deprived of a federally protected right or right guaranteed by the Fourteenth Amendment to the United States Constitution and for failure on the part of appellees to establish by the proper degree of proof that Section 3313.66 of the Ohio Revised Code was unconstitutional. No specific ruling on this motion was ever made.

On August 31, 1973, appellees filed an amended complaint naming substituted parties defendant, and appellants at the request of the Court filed an answer on behalf of the substituted parties on September 12, 1973. The answer filed on September 12, 1973, did not admit the lower court had jurisdiction.

The Court on September 12, 1973, filed its opinion and order finding Section 3313.66 of the Ohio Revised Code to be unconstitutional on its face, while at the same time recognizing that a three-day suspension could be handed out in certain situations without first having a hearing. (p. 64, infra).

THE QUESTIONS ARE SUBSTANTIAL

A. THE LOWER COURT OPINION IS IN DIRECT CONFLICT WITH THE DECISION OF THIS COURT IN *SAN ANTONIO INDEPENDENT SCHOOL DISTRICT V. DEMETRIO P. RODRIGUEZ, 36 L. ED. 2D 16 (1973).*

This Court, during the year 1973, in *San Antonio Independent School District v. Demetrio P. Rodriguez,* 36 L. Ed. 2d 16, 43, 44, (1973), specifically concluded that education is not one of the fundamental rights guaranteed either expressly or implicitly by the Federal Constitution. The Tenth Circuit in *Fleming v. Adams,* 377 F. 2d 975 (1967) had previously reached the same conclusion.

Faced with the principle that the Due Process Clause becomes applicable only in those situations where a fundamental interest protected by the Constitution is being violated, the lower court at bar concluded:

> "The question presented is whether the State created right to an education is a protected liberty under the Fourteenth Amendment's due process clause.
> "
> . . . .
> "Considering the importance of education in our society today, the Court HOLDS that the State created entitlement to an education is a liberty protected by the due process clause of the Fourteenth Amendment." (p. 60, infra).

Without relating education to any other protected activity, and without finding any other protected activity to be involved, the lower court in concluding as it did, put itself squarely in conflict with this Court's opinion in *San Antonio Independent School District v. Demetrio P. Rodriguez,* 36 L. Ed. 2d 16, 43, 44 (1973) wherein this Court specifically concluded that the importance of education will not alone elevate it to the status of a fundamental right protected by the Federal Constitu-

tion. In reaching that conclusion, the lower court specifically recognized that education is not a property right. (p. 56, infra). In other words, the lower court, not finding any other protected right implicated, not finding that education is a property right, concludes in a vacuum that the importance of education makes it a liberty protected by the Federal Constitution. Such analysis of the meaning of the term liberty as used in the Federal Constitution is historically incorrect and will not withstand scrutiny. Shattuck, *"The True Meaning of the Term 'Liberty' in those Clauses in the Federal and State Constitutions which Protect 'Life, Liberty and Property',"* 4 Harvard L. Rev. 365.

The conclusion that because an activity is important it is therefore protected by the Federal Constitution is unwarranted and far reaching. The lower court reaches this novel conclusion in an action which challenges the validity of a statute, (Section 3313.66 of the Ohio Revised Code), which restricts the right of a local school principal to suspend a pupil to from one to ten days. The lower court in essence concludes that the statute is unconstitutional on its face while at the same time recognizing that there are situations such as would warrant a suspension of up to three days without first having a hearing. (p. 64, infra). In so concluding that the statute is unconstitutional on its face, and not by reason of its operation, (p. 37, infra) the lower court in a secondary school setting is essentially saying that the difference between the three days it recognizes, and the permitted ten days set out in the statute, a difference of seven days, is sufficient to place the statute on its face in direct conflict with the Federal Constitution. The protected liberty thus found, is said to arise by virtue of its importance in society. If education and a system of education is primarily a matter of State concern and is a recognized legitimate State interest, then the con-

clusion reached by the lower court is neither necessary nor warranted and can be categorized as a decision whereby the lower court sought to implement its subjective values by intrusion into a legitimate State activity, namely local school management. *San Antonio Independent School District v. Demetrio P. Rodriguez,* 36 L. Ed. 2d 16, 44, 45 (1973); *Tinker v. Des Moines Community School District,* 393 U.S. 503, 526, 21 L. Ed. 2d 731, 749 (1969), dissenting opinion by Justice Harlan; and *Karr v. Schmidt,* 401 U.S. 1201, 1203, 27 L. Ed. 2d 797, 799, (1971). Such constitutional analysis where no other protected right is implicated, is not warranted.

Further, if the lower court has determined that a State may create a liberty such as is protected by the Due Process Clause, it has announced a proposition without historical or philosophical foundation. This Court has never held that a State may create liberty. Such a determination is at variance with historical foundations surrounding the term. As Justice Swayne in the *Slaughter-House* cases, 16 Wall. 36, 127, stated, "liberty is freedom from all restraints but such as are justly imposed by law." Liberty is associated with action and the right of a person to act does not emanate in the first instance from the State. Liberty, as that term has been used in the Federal and State Constitutions, is not something which is granted or created by the State. (Shattuck, *"The True Meaning of the Term 'Liberty' in those Clauses in the Federal and State Constitutions which Protect 'Life, Liberty and Property'."* 4 Harvard L. Rev. 365).

In addition, the determination that the State has created a right of liberty under the Federal Constitution is unsupported by any State court decisions. Education and the establishment of a system of education is primarily a matter of local concern. *Board of Regents v.*

Roth, 33 L. Ed. 2d 548, (1972), and *Perry v. Sinderman,* 33 L. Ed. 2nd 570, 581 (1972), concurring opinion of Justice Burger. When the system was established, the State did determine that restricting the right of a principal, as a part of such system, to temporarily suspend students for the short period of from one to ten days would provide the principal with a way to maintain discipline within the school and yet would not prevent or hinder full participation in the system by those students. In considering the challenge to the constitutionality of Section 3313.66 of the Ohio Revised Code, the lower court was certainly bound to presume the existence of such determination. *Alabama State Federation of Labor v. McAdory,* 325 U.S. 450, 465, 89 L. Ed. 1727, 1737 (1944). Ten days or the difference between three and ten days is not sufficient to overcome such presumption.

Serious constitutional questions do surround the lower court's determination that the statute is unconstitutional on its face, including one relating to whether or not the lower court interjected itself into an area where neither a fundamental nor State created interest was really involved. *Jackson v. Hepenstall,* 328 F. Supp. 1104, 1107 (1971); and *Negron v. Wallace,* 436 F. 2d 1139, 1141 (1971).

The determination by the lower court should receive further plenary consideration.

THE LOWER COURT OPINION IS CONTRARY TO THIS COURT'S PRONOUNCEMENT THAT PROCEDURAL DUE PROCESS RIGHTS ATTACH ONLY WHERE STATE ACTION CONDEMNS A PERSON TO SUFFER GRIEVOUS LOSS OF A SIGNIFICANT PROTECTED RIGHT.

B. A STATUTE WHICH RESTRICTS THE POWER OF A PRINCIPAL TO SUSPEND TO FROM ONE TO TEN DAYS IS NOT A STATUTE WHICH ON ITS FACE CONDEMNS A STUDENT TO SUFFER GRIEVOUS LOSS OF ANY SIGNIFICANT PROTECTED RIGHT.

This Court has in several recent cases stated and applied the concept that whether or not the procedural protections required by the Due Process Clause attach to a given situation depends not only on whether or not the interest is one within the contemplation of the terms "liberty" or "property", but also upon the extent to which an individual will be condemned to suffer grievous loss of the interest. *Joint Anti-Facist Refugee Committee v. McGrath,* 341 U.S. 123, 168, 71 S. Ct. 624, 647 (1951); *Hannah v. Larche,* 363 U.S. 420, 441-442 (1960); and *Morrissey v. Brewer,* 408 U.S. 471, 33 L. Ed. 2d 484, 494 (1972). The Circuit Courts are following the concept. *McNeil v. Butz,* 480 F. 2d 314, 318 (1973).

Not only does the lower court substantially ignore this Court's recent decision in *San Antonio Independent School District v. Demetrio P. Rodriguez,* 36 L. Ed. 2d 16 (1973), its opinion demonstrates neither recognition nor application of the "grievous loss" test. Involved in this case is a statute which restricts the authority of a principal to temporarily suspend a student, limiting such authority to a period of from one to ten days. The lower court first recognizes that situations exist warranting suspension up to three days without a hearing. Next the court, after finding that education is a protected liberty by virtue of its importance and without making any determination in regard to the "grievous loss" test, concludes that the difference in time between three days and ten days (seven days) is of sufficient magnitude to render the entire statute unconstitutional on its face as being violative of the Due Process Clause. Even were we

to recognize that education enjoys some protection under the Constitution, the interest of the State is not so inferior that a period of ten days or the difference in time between three days and ten days can be said to so sharply implicate any recognized interest in education as to support a conclusion that a person who is suspended for either period of time is condemned to suffer a grievous loss of such a recognized interest.

Even before this Court announced its decision in *San Antonio Independent School District v. Demetrio P. Rodriguez,* 36 L. Ed. 2d 16 (1973), concluding that education is not a fundamental right guaranteed either explicitly or implicitly by the Constitution, lower Federal District and Circuit Courts had concluded that a temporary ten day suspension given to a high school student was not violative of the Due Process Clause of the Fourteenth Amendment. *Baker v. Downey City Board of Education,* 307 F. Supp. 517 (1969); *Banks v. Board of Public Instruction of Dade County,* 314 F. Supp. 285 (a three-judge court); *Farrell v. Joel,* 437 F. 2d 160 (1971); *Hernandez v. School District Number One, Denver, Colo.,* 315 F. Supp. 289, 293 (1970); *Murray v. West Baton Rouge Parish School Board,* 472 F. 2d 438, 443 (1973); *Hatter v. Los Angeles City High School District,* 310 F. Supp. 1309 (1970) (involving an eight day sussuspension); *Rumler v. Board of School Trustees,* 327 F. Supp. 729, affirmed 437 F. 2d 953 (1971), *Dunn v. Tyler Independent School District,* 460 F. 2d 137 (1972); *Linwood v. Board of Ed., City of Peoria, Sch. Dist. No. 150,* Ill. 463 F. 2d 763 (1972) and *Black Coalition v. Portland School District No. 1,* 484 F. 2d 1040, 1044 (1973), which recognized that short term temporary suspensions do not violate the Due Process requirements of the Fourteenth Amendment. If the true test today, as promulgated by this Court, is one of not only determining whether or not the interest is one within the concepts of liberty or property set out in the language of the Four-

teenth Amendment, but also one of determining to what extent a person is condemned to suffer grievous loss of that interest, then the lower court did not apply the test. If a sharply defined fundamental interest is not grievously implicated, how can it be concluded that a period of ten days or seven days is sufficient to place the entire statute, on its face, in direct conflict with the Due Process Clause of the Fourteenth Amendment?

Furthermore, the lower court's opinion ignores the Circuit and District Court decisions cited herein which hold that temporary pupil suspensions, including ten day suspensions, do not violate the Due Process Clause of the Fourteenth Amendment. The lower court could not have reached the conclusion it did with respect to the entire statute had it given any credence to those decisions. Instead the lower court transposes those protections which have been previously held to surround the expulsion of a student into the area of temporary suspensions and concludes that the entire statute is unconstitutional on its face. If it can logically be said that a temporary suspension of from one to ten days can effectively be equated with expulsion, or that the difference between three days and ten days, namely, seven days can be equated with expulsion, then we are quickly approaching the conclusion that due process is a fixed procedure which must be accorded in every situation. It can not then be said that local school officials are being accorded the widest authority in maintaining discipline and order in the local schools. *Tinker v. Des Moines Community School Dist.*, 393 U.S. 503, 526, 21 L. Ed. 2d 731, 749, (1969) opinion of Justice Harlan; and *Karr v. Schmidt*, 401 U.S. 1201, 1203, 27 L. Ed. 797, 799 (1971). Further, if limited suspensions of from one to ten days are to be grouped and treated the same as expulsion, then, the requirement adhered to by this Court, of finding that a person is condemned to suffer grievous loss

of a protected interest before Due Process protections attach, becomes meaningless.

If it is recognized that local authorities possess wide authority in the field of local education, and if no other recognized protected right is directly involved, it does not logically follow that a statute which restricts the right of a principal to suspend to a maximum of ten days, is unconstitutional on its face. Is the lower court in drawing such fine distinctions applying a test of determining whether or not a person is condemned to suffer grievous loss of a protected interest or is the court making an unnecessary intrusion into a legitimate State activity? I submit that the drawing of such fine distinctions is a matter of legislative concern. *Communist Party v. Subversive Activities Control Board*, 367 U.S. 1, 72, 81 S. Ct. 1357, 1397 (1961).

In so concluding that the entire statute is unconstitutional on its face, the lower court's opinion is contrary to this Court's decisions and presents a substantial question relating to the proper application of those decisions.

THE LOWER COURT OPINION IS IN CONFLICT WITH CIRCUIT AND DISTRICT COURT DECISIONS WHICH HAVE CONCLUDED THAT THE IMPOSITION OF SHORT SUSPENSIONS DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

Until the lower court opinion in the instant case, both Circuit and District Courts recognized a distinction in secondary schools between the imposition of short temporary suspensions, long term suspensions, and expulsions. Specifically, it was recognized that a statute which authorized the imposition of a short term ten day suspension did not violate the Due Process Clause of the Fourteenth Amendment. *Banks v. Board of Public Instruction of Dade County*, 314 F. Supp. 285 (1970) (a three-judge

court). Other district courts either determined that a suspension of ten days fell into the category of being a mild sanction or recognized that short suspensions were not to be treated the same as long term suspensions or expulsions. *Baker v. Downey City Board of Education,* 307 F. Supp. 517 (1969); *Hatter v. Los Angeles City High School District,* 310 F. Supp. 1309 (1970); *Hernandes v. School District Number One, Denver, Colo.,* 315 F. Supp. 284 (1970), and *Rumler v. Board of School Trustees;* 327 F. Supp. 729, affirmed 437 F. 2d 1953 (1971).

The Circuit Courts have followed a similar pattern. *Farrell v. Joel,* 437 F. 2d 160 (1971); *Dunn v. Tyler Independent School District,* 460 F. 2d 137, 144, 145, (1972); *Linwood v. Board of Ed. City of Peoria, Sch. Dist. No. 150,* Ill. 463 F. 2d 763, 768, 769 (1972); *Murray v. West Baton Rouge Parish School Board,* 472 F. 2d 438 (1973); and *Black Coalition v. Portland School District No. 1,* 484 F. 2d 1040, 1044 (1973). The lower court decision herein is in direct conflict with those decisions, and that conflict should be resolved. Particularly does this conflict become more apparent when it is realized that the lower court really makes the decision it does on the basis of seven days. While giving recognition to the fact that three days suspensions can be imposed in certain situations without a hearing, the District Court turns and concludes that a period of seven additional days is sufficient to place the entire statute in direct conflict with the Federal Constitution as a matter of law. The interest of the state in discipline within the education system it has established is not so inferior as to command such a constitutional result. *Cook v. Carlson,* 364 F. Supp. 24 (1973). It is illogical to conclude that the liberty found to exist by the lower court is not

sharply implicated where only three days is involved but that it becomes sharply implicated where seven additional days or any part thereof is added. The Federal Constitution does not command such distinctions. Certainly, in light of this Court's holdings in *Hannah v. Larche*, 363 U.S. 420 (1960); *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Board of Regents v. Roth*, 33 L. Ed. 2d 548 (1972), all to the effect that the Due Process Clause only attaches in those situations where the individual is condemned to suffer a grievous loss of a protected right, a distinction does exist and should continue to exist between suspensions and expulsions. They cannot and should not be viewed exactly the same. A period of time involving seven additional days or any fraction thereof can not be viewed as condemning a student to suffer grievous loss of a protected right as a matter of law. The necessity to resolve this conflict is even more apparent in light of this Court's decision in *San Antonio Independent School District v. Demetrio P. Rodriguez*, 36 L. Ed. 2d 16, 43, 44 (1973).

If law and order in the classroom are to remain truly and primarily the responsibility of the educational system, the resolution of this conflict is important. *Madera v. Board of Education*, 386 F. 2d 778, 788-789, *cert. denied*, 390 U.S. 1028, 20 L. Ed. 2d 284 (1967).

In deciding that Section 3313.66 of the Ohio Revised Code was unconstitutional on its face and in its entirety, the lower court in this case completely failed to give any credence to the distinction between short and long term suspensions such as other courts have found to exist. That failure and the resulting conflict presents a situation which should be resolved. In short, the lower court viewed the Due Process Clause as something which is applicable to every conceivable situation, even

including situations in which no clear constitutionally protected right is involved.

CONCLUSION

The substantial nature of the constitutional questions posed by the lower court opinion is apparent. The lower court opinion is in direct conflict with this Court's decision in *San Antonio Independent School District v. Demetrio P. Rodriguez*, 36 L. Ed. 2d 16, 43, 44 (1973), relating to the nature of education and in direct conflict with this Court's decisions relating to the factors that must be present before the protections required by the Due Process Clause attach. If there is any distinction between a short suspension, a long term suspension and an expulsion, then the conclusion that the Due Process Clause attaches no matter what the nature of the discipline cannot be supported. A person who receives a three day or five day suspension, for example, cannot be said to be condemned to suffer grievous loss, even of an unprotected right. In effect, the lower court's opinion ignores the tests established by this Court and states that *any* suspension in the educational process is violative of the Due Process Clause of the United States Constitution, except that in certain limited situations, suspensions up to three days may be handed out without first having a hearing. The Constitution does not command the drawing of such fine distinctions.

Further, the lower court opinion is in direct conflict with other decisions of both the circuit and district courts regarding short suspensions. A three-judge court had previously specifically upheld a statute permitting a temporary ten day suspension as not being violative of the Due Process Clause. *Banks v. Board of Public Instruction of Dade County*, 314 F. Supp. 285 (1970).

If education and control of the classroom in the high school setting are to remain primarily a matter of local control, then a real need exists to resolve the questions surrounding discipline which continue to occur. The Due Process Clause should not be used or become a weapon to venerate form over real substance. The relationship between education and the students who participate in the system is a matter of state concern and state law. No deference was shown to that principle in this case. If the power of a principal to suspend a student is to be further restricted from ten days to three days, such action should rest with the body that created the system, namely the State Legislature.

The interest of the state in its educational system and discipline within that system has not become so inferior to the interest of a student that it can be concluded that a restrictive statute such as section 3313.66 of the Ohio Revised Code is unconstitutional on its face. *Cook v. Carlson*, 364 F. Supp. 24, 26, 27 (1973). The Federal Constitution does not command such finite scrutiny of legislative discretion.

The decision of the lower court should be reversed.

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APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action 71-67

EILEEN LOPEZ, et al.,
Plaintiffs

vs

HERBERT M. WILLIAMS, et al.,
Defendants

JUDGMENT

This action came on for hearing before the Court, the Honorable John W. Peck, Judge, United States Court of Appeals for the Sixth Circuit; the Honorable Joseph P. Kinneary, Chief Judge, United States District Court; and the Honorable Carl B. Rubin, United States District Judge, and the issues having been duly heard and a decision having been duly rendered;

IT IS ORDERED AND ADJUDGED that plaintiffs were denied due process of law because they were suspended without adequate hearing. It is further concluded that the statute and regulation challenged are not unconstitutionally vague and overbroad.

The Court Declares that Section 3313.66, Ohio Revised Code and the regulations adopted by the Columbus Public Schools pursuant thereto which were in force at the time of plaintiffs' suspensions are unconstitutional, in that they provide for suspension from the Columbus Public Schools without first affording the student due process of law.

It is Ordered that the defendants delete all reference to the suspensions and disciplinary transfers of plaintiffs from the records of the Columbus Public Schools.

IT IS FURTHER ORDERED that the plaintiffs recover of defendants their costs of action.

Dated at Columbus, Ohio, this 17th day of September, 1973.

JOHN D. LYTER
Clerk of Court

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

Civil Action 71-67

EILEEN LOPEZ, et al.

Plaintiffs

vs

HERBERT M. WILLIAMS, et al.

Defendants

ORDER

For the reasons and on the grounds which more fully appear in the Opinion of this Court filed simultaneously herewith, it is concluded that plaintiffs were denied due process of law because they were suspended without adequate hearing. It is further concluded that the statute and regulation challenged are not unconstitutionally vague and overbroad.

The Court DECLARES that Section 3313.66, Ohio Revised Code and the regulations adopted by the Columbus Public Schools pursuant thereto which were in force at the time of plaintiffs' suspensions are unconstitutional, in that they provide for suspension from the Columbus Public Schools without first affording the student due process of law.

It is hereby ORDERED that the defendants delete all reference to the suspensions and disciplinary transfers of

plaintiffs from the records of the Columbus Public Schools.

BY ORDER OF THE COURT
JOHN W. PECK
Judge, United States Court of Appeals for the Sixth Circuit
JOSEPH P. KINNEARY
Chief Judge
United States District Court
CARL B. RUBIN
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

Civil Action 71-67

EILEEN LOPEZ, et al.

Plaintiffs

vs

HERBERT M. WILLIAMS, et al.

Defendants

OPINION

Before John W. Peck, Judge, United States Court of Appeals for the Sixth Circuit; Joseph P. Kinneary, Chief Judge, United States District Court; and Carl B. Rubin, United States District Judge.

Kinneary, Chief Judge. This matter is before the Court on plaintiffs' motion for judgment on the pleadings under the provision of Rule 12(c) of the Federal Rules of Civil Procedure.

This is an action for injunctive and declaratory relief arising out of the suspension of the nine plaintiffs from Columbus Public School System in February and March, 1971.

A Three-Judge Court was convened under the provisions of Title 28, United States Code, Section 2281. *Calloway* v. *Briggs*, 443 F. 2d 296 (6th Cir. 1971).

The Court has jurisdiction under the provisions of Title 28, United States Code, §§1343(3), 2201 and 2202. Plaintiffs' claims for relief are alleged under the provisions of Title 42, United States Code, Section 1983.

Plaintiffs challenge the constitutionality of §3313.66 of the Ohio Revised Code and §1010.04 of the Administrative Guide of the Columbus Public Schools, and the Co-

lumbus Public School Policy Statement on Discipline. They allege two claims for relief. First, suspension without the minimal due process safeguards of notice and prior hearing is violative of the Fourteenth Amendment to the Constitution of the United States because it denies students an education, an important public right, without due process of law. Second, the statute and regulation are unconstitutionally vague and overbroad because they provide no ascertainable standard for acceptable conduct.

Upon the consent of all parties and the other members of the panel, the factual issues in this case were tried before the Honorable Joseph P. Kinneary, Chief Judge, United States District Court for the Southern District of Ohio, *See, Rosado* v. *Wyman*, 397 U.S. 397, 403 (1970) who made the following findings of fact which are adopted fully by the Three-Judge District Court.

FINDINGS OF FACT

The plaintiffs presented evidence relating to the dismissals from school of Dwight Lopez, Betty Jane Crome, Susan Cooper, and Deborah Fox. In addition, Phillip Fulton, principal of Marion-Franklin High School during the 1970-1971 school year testified by deposition concerning the suspensions from Marion-Franklin High School of plaintiffs Tyrone Washington, Clarence Byars, Rudolph Sutton and Bruce Harris. There was no evidence presented to the Court concerning the suspension from the Columbus Public School System of the plaintiff Carl Smith.

Plaintiffs seek to maintain a class action. Phillip Fulton, principal of Marion-Franklin High School in February-April, 1971, testified on deposition that on or about March 15, 1971 fourteen students were recommended

for suspension from his school. Dwight Lopez, a student at Central High School testified that he personally knew more than 75 students who were suspended from Central High School on February 26, 1971. Doctor John Ellis, Superintendant of Columbus Public Schools, testified on deposition that the Department of Pupil Personnel keeps some records on suspensions, but he did not have them available at the time of his deposition. No other evidence relating to the number of students suspended in February-April, 1971 was received by the Court.

Section 3313.66, Ohio Revised Code provides, in relevant part, that:

> . . . the principal of a public school may suspend a pupil from school for not more than 10 days. . . . Such . . . principal shall within 24 hours after the time of expulsion or suspension, notify the parent or guardian of the child, and the clerk of the Board of Education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the Board of Education at any meeting of the Board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the Board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The Board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester.

Section 1010.04 of the Administrative Guide to the Columbus Public Schools (January 2, 1973) provides that:

> Pupils may be suspended or expelled from school in accordance with the provision of §3313.66 of the Revised Code.

The parties introduced into evidence three memorandums from the Department of Pupil Personnel of the Columbus Public Schools on the subject of suspension of students from school. The earliest memorandum is dated August 16, 1971.[1] None of the memorandums were in effect at the time plaintiffs were suspended from the Columbus Public Schools.

Phillip Fulton, principal of Marion-Franklin High School during the 1970-1971 academic year, testified that the following procedure was in effect at the time of

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[1]The memorandums are dated August 16, 1971; February 21, 1973; and July 10, 1973. The memorandum of August 16, 1971 provides, in relevant part, with regard to suspension that when a principal suspends a student he should:

"1. Notify him of the exact reason and the term of the suspension.
2. Notify the parent, by phone if possible, and explain the suspension.
3. Within 24 hours, write the parent a letter including the reason of the suspension.
4. Send a carbon copy of this letter to Pupil Personnel. On cases where you expect difficulty, or on cases which are not retained, be sure to include a brief summary of the incident along with any other information which may be of help.
5. Be ready and available for a conference if one is requested by the parent.

The length and term of a suspension are left at the discretion of the principal. Be sure the students and parents know the exact date when the suspension ends."

The memorandum of February 21, 1973 provides, in relevant part, with regard to suspension that when a principal suspends a student he should:

"1. Notify him [the student] of the exact reason and term of the suspension.
2. Notify the parent, by phone if possible, and explain the suspension.
3. Within 24 hours, write the parent a letter including the reason for the suspension and the date the student is to return to school.
4. Send a carbon copy of this letter to pupil personnel. On cases where you expect difficulty, or on cases which are not routine, be sure to include a brief summary of the incident along with any other information which may be of help.

The length and term of a suspension are left at the discretion of the principal. Be sure the students and parents know the exact date when the suspension ends."

the suspensions which are the basis of the present action:

> Basically, the assistant principals are the disciplinarians. They held the discipline responsibility in a given school. The majority of times, the incident does occur with an administrator. It occurs in a situation where a teacher refers it to administration. . . .
>
> The teacher would send to the office in written form, it was to be written. We had a form that we followed indicating the incident, what had happened, and this was brought to the office at the time the student was brought to the office. The administrator then would go over the incident as written or as dictated by the teacher with the student. The student then would be given an opportunity, if the student didn't agree with the way it happened, then he would send back for the teacher and bring the teacher in who if we have some reason to see if there is a discrepancy. We then asked the teacher to interpret what he has written for us. If there is a large discrepancy where a student would deny it and the teacher would confirm it, then we would react upon this information according to what the teacher tells us. Then if it is deemed that there is a suspension, you follow the procedure that I have already formulated. You call the parent first and then send the student home. Again, if we can't find the parent, we keep the student until his normal school day is over. So they are retained until their school day is completed. The parent, if he can be contacted in the meantime, then would be informed of the situation. This would be followed by a letter stating again that we would discuss but including also the time of the appointment, if it has been prearranged. If not, the parent may get in tomorrow. They might say that they can get in tonight and maybe have time to see the administrator and that would be set up at that time. . . .
>
> . . .

> [At the conference] [t]he problem, the individual, we talk about their school record. We get their entire school record. We talk about their academic problems, if they exist. We talk about their potential. We talk about their goals. It is a conference to remedy the problem and you try to find a solution so that the student is successful in his schooling. . . .
>
> [It is not a conference to verify the facts supporting the suspension.] It is to communicate with the parent, as part of my responsibility, the problem that exists and ask for their help. We inform them and then find out what directions we can take that will eliminate the need for further problems.

On July 10, 1973, the Department of Pupil Personnel of the Columbus Public Schools forwarded to all principals a memorandum containing guidelines for the suspension of students. The memorandum contained the following guidelines:

A. Grounds for suspension.

1. Violation of any City of Columbus Ordinance or state or federal law; and
2. Violation of written school rules of Board of Education regulations; and
3. Activities which interfere with or threaten the orderly functioning of school activities including classrooms, extra-curricular and athletic activities; and
4. Any activity which is grounds for expulsion. This shall include, but not be limited to, assault on a teacher, arson, or destruction of school property, active leadership in school disruption and direct refusal to follow a direct order from an administrator in time of school tension.

B. Suspension procedures.

1. Whenever an incident occurs which may lead to a suspension, the principal or assistant prin-

cipal shall investigate the nature of the alleged offense before commencing suspension procedures. Unless the pupil is unavailable or unwilling to discuss the incident with the principal, this investigation shall include a discussion with the pupil so that the pupil may be given an opportunity to be heard with respect to the alleged offense.

2. If the principal determines that grounds for suspension do exist, he shall notify the pupil of the exact reason and length of the suspension and further inform the pupil that the suspension means he must stay off school property and away from school-sponsored activities during the entire term of the suspension.
3. Notify the parent or guardian of the suspension, by phone if possible, and explain the reason and length of the suspension. Except in cases of disruption where circumstances make it vital that one or several pupils be removed from the school property immediately because of a threat to the safety of other pupils, faculty or school property, no pupil shall be released from school during the school day without notifying the parent or guardian in person or by phone.
4. The parent or guardian shall be provided an opportunity to attend a conference with the principal, to review the reasons for the suspension.
5. Within 24 hours after the incident leading to suspension, a letter shall be written to the parents or guardian which shall include the reasons for and term of the suspension and that a conference with the principal will be arranged, at mutual convenience, at the earliest possible time. A carbon copy of this letter, together with relevant information regarding the suspension, shall be sent to Pupil Personnel (designated agent of Clerk of Board of Education).

6. In the event that any suspension is subsequently found to be erroneous, all references to the suspension shall be expunged from the school records.
7. At the conclusion of a suspension, it is the responsibility of the principal to see that the pupil is informed that the suspension is terminated and he is eligible to return to school.

DWIGHT LOPEZ

In February, 1971, Dwight Lopez was 19 years of age and a student at Central High School, Columbus, Ohio. He was the only witness to give testimony regarding his suspension from Central High School. Defendants did not present any evidence regarding Dwight Lopez's suspension from Central High School, other than the letters sent by the Administration at Central High School to Dwight Lopez's parents regarding the suspension.

Dwight Lopez testified that in late February, 1971, there was tension at Central High School over Black History Week. On the morning of February 26, 1971, he had a free study period in the lunch room. While he was in the lunch room, black students came in and started overturning tables. Dwight Lopez testified that he and several of his friends walked out of the lunch room. He testified that he took no part in the unlawful activity, and that he did not violate any school rule or any other rule.

On the morning of February 26, 1971, school was suspended at Central High School. Dwight Lopez returned to his home. There he received a phone call from Mr. Calvin Parks, principal of Central High School, notifying him that he had been suspended. He was not advised of the reasons for the suspension.

Dwight Lopez's parents received the following letter dated February 26, 1971:

Dear Mr. and Mrs. Lopez:

We have had a continued [sic] problem in school for several days and today a group of students disrupted our complete school program.

Dwight was in the group and we need to have a personal conference with you and Dwight to determine what the problem may be. Please keep him at home until a conference can be arranged. This will take some time. We will be communicating with you.

Respectfully,
CALVIN PARKS, *Principal*

On March 1, 1971, Mr. and Mrs. Lopez received the following letter:

Dear Mr. and Mrs. Lopez:

It will be necessary for you to appear at the Board of Education before Dwight returns to school. I have given your telephone number to Mr. Williams of the Pupil Personnel Office of the Board of Education. He will be in touch with you to set up an appointment.

Dwight is to remain home during the hours school is in session.

Yours truly,
JAMES C. FURGASON

On March 5, 1971, Mr. and Mrs. Lopez were advised that a meeting had been set for March 8, 1971. Dwight Lopez testified that on March 8, 1971, he, his mother and a sister went to the Board of Education building but could not get in because the entrance was blocked by several hundred persons who were present at a rally protesting Board of Education policies. No further meeting was scheduled.

Dwight Lopez testified that his sister wrote a letter to Columbus Public School officials protesting his sus-

pension.[2] He further testified that following March 8, 1971, his mother and his sister called the Office of Pupil Personnel but could not get past the secretary. On March 24, 1971, Dwight Lopez was transferred from Central High School to the Adult Day School. He did not request this transfer. Dwight Lopez testified that he did not attend the Adult Day School during the Spring of 1971. However, he returned to the Columbus Adult Night School and received his diploma on June 10, 1972.

BETTY CROME

In March, 1971, Betty Crome was 13 years of age and a student at McGuffey Junior High School. She was the only witness to give testimony regarding her suspension from McGuffey Junior High School. The defendants presented no testimony regarding her suspension, other than a letter from the principal of McGuffey Junior High School to Miss Crome's parents. Betty testified that on March 3, 1971, she went to her first period class. When class was dismissed, there were disturbances in the hall.

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[2]Defendants offered into evidence Dwight Lopez's Columbus Public School's cumulative record folder. It contained the following letter, dated March 24, 1971 to Mrs. Eileen Lopez from Mr. H. M. Williams, Director of Pupil Personnel from Columbus Public Schools:

Dear Mrs. Lopez:

I have received a letter from your daughter, Mrs. Alana Robinson, pertaining to your son, Dwight. She was inquiring as to the status of Dwight and his returning to school in Columbus.

As you no doubt recall, I had scheduled an appointment with you and Dwight on March 8, 1971 at 8:30 a.m. The purpose of this conference was to discuss various possibilities relating to Dwight's future educational plans.

This appointment was not kept nor did I receive from you a request to set up another conference. Since Dwight is 19 years of age and is no longer of compulsory school age, I thought that possibly you had made other plans for Dwight.

In regards to Dwight's placement in a Columbus school, permission is granted for him to enroll in Adult Day School, 272 S. Nelson Road, immediately. Waiver of fees is being recommended.

Sincerely,
H. M. WILLIAMS, DIRECTOR
Pupil Personnel

Students were breaking light bulbs and throwing glasses in the school cafeteria. She could not get to her second period class, therefore she went out into the playground with other students. The principal came out into the playground and told the students assembled there to go home.

Betty further testified that she went with other students to Linden McKinley High School which was on her way home, and it was her purpose to return to her home. However, she stopped with the other McGuffey Junior High School students at Linden McKinley High School. There she was arrested by Columbus Police officers and taken to the Juvenile Bureau of the Columbus Police Department. Police called her mother who came to get her. Prior to releasing her they discussed Betty's situation with her mother. No charges were brought by the police department.

On or about March 3, 1971, Betty's mother received the following letter:

> Dear Mrs. Adams:
>
> This is official notification that your son/daughter, Betty J. Crome, has been temporarily suspended from McGuffey Junior High. This suspension will continue until March 8, 1971 at 10:45 at which time you are to accompany him/her to school for a conference. During this time he/she is to remain at home during school period.
>
> Yours respectfully,
> FRANK D. MASON, *Principal*

Betty further testified that neither she nor her parents were ever advised of the reasons for her suspension. Her mother never talked with the principal regarding the suspension. She was returned to McGuffey Junior High School on or about March 8, 1971. She was not given an opportunity to make up work that she missed during the period of her suspension. She is currently a student in the Columbus Public School system.

DEBORAH FOX

In March, 1971, Deborah Fox was 16 years of age and a tenth grade student at Marion-Franklin Senior High School. She testified that on March 10, 1971, there were disturbances at Marion-Franklin High School. During the noon hour, Mr. Kollmer, an assistant principal, came up to her in the cafeteria and told her that he wanted her to come to his office. Mr. Kollmer said that if she didn't go to his office, she could go home for 10 days. Miss Fox went to Mr. Kollmer's office after talking with her mother on the telephone. Mr. Kollmer then told her that she was suspended for 10 days. She testified that she did not do anything which violated any rule or regulation of the school.

Miss Fox further testified that she was not given an opportunity to explain her side of the story. There was no hearing in which the facts underlying her suspension was determined.

On March 19, 1971, she went with her father to Mr. Kollmer's office and she was advised that she was again suspended for a period of 10 days. She stated no reason was given for the suspension.

Miss Fox further testified that following this second 10 day suspension, she was transferred from Marion-Franklin to South High School and completed the school year there. Her family then moved into the district of East High School and she was permitted to attend school there. Subsequently, she graduated from Central Night School in June, 1972.

Betty further testified that she was not given an opportunity to make up any of the work that she missed during her suspension. She believed that her grades went down following her suspension and transfer.

Phillip Fulton, principal of Marion-Franklin High School, gave testimony by deposition which is in conflict with the testimony given by Deborah Fox. This prinicpal testified that on Wednesday, March 10, 1971, at approxi-

mately 9:00 a.m., students were assigned either to a "club activity" or to a study hall. Four girls, including Deborah Fox, left their club "and had gone into the halls and created a disturbance". They refused to obey a teacher's order to return to their club activity. Two assistant principals were unable to get the four girls to abide by school rules. Mr. Fulton then arrived, and told the girls to report to their assigned class. Mr. Fulton did not suspend any of the students. They apparently complied with his order to return to class.

Mr. Fulton testified that during the confrontation in the hallway Miss Fox was "very loud and disrespectful." She shouted at Mr. Kollmer, an assistant principal, "I hate you." During the noon hour Mr. Kollmer confronted Miss Fox in the school cafeteria. She was "still making negative comments." Mr. Fulton testified that she again told Mr. Kollmer "I hate you." Mr. Kollmer told her to report to the administration office. Miss Fox refused. Mr. Kollmer then contacted her mother and requested that she come to the school to pick her up. Mr. Kollmer talked with plaintiff's mother prior to imposing the suspension. Mr. Fulton acquired his information regarding Miss Fox's conduct in part as a result of reports made to him by Mr. Kollmer. He also personally observed and heard Miss Fox's disruptive activity in the administration offices. Mr. Fulton testified that she was making rude and derogatory remarks to both of his assistant principals, Mr. Kollmer and Mr. Gill.

On March 10, 1971, Mr. Kollmer wrote the following letter to Miss Fox's parents:

> Dear Parents:
>
> I have suspended Deborah from Marion-Franklin High School until Friday, March 19.
>
> Deborah was extremely defiant and disrespectful with the assistant principal today.
>
> During the suspension period, your daughter is to remain at home during school hours, and not

attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,
RICHARD KOLLMER,
Assistant Principal

Mr. Fulton testified that on March 19, 1971, Miss Fox "returned to school with her parents again and repeated the same kind of behavior that she had repeated earlier, again being disrespectful of Mr. Kollmer . . . and disrespectful in the office." On March 19, 1971, Mr. Kollmer sent the following letter to Miss Fox's parents:

Dear Parents:

I have suspended Deborah Fox from Marion-Franklin High School until Monday, March 29, or until contacted by Mr. Robert Carter or his representative regarding your daughter's school placement.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,
RICHARD KOLLMER,
Assistant Principal

Mr. Fulton testified that he and his staff exhausted all avenues open to them with regard to Miss Fox's school behavior. He testified that she was a bright student but did not apply herself because she had a peer group position of leadership which identified her in the role of militant. Mr. Fulton believed that the transfer and consequent change of environment would result in better academic achievement for Miss Fox. Miss Fox's cumulative record folder contains the following entry under a category denominated "Additional Test Results

— Comments": "3-15-71 Suspended for student disruption".

SUSAN COOPER

Susan Cooper testified that in March, 1971 she was an eleventh grade student at Marion-Franklin High School. On Monday, March 15, 1971, there was racial tension at Marion-Franklin High School. She wanted to go home, but was unwilling to leave without an excuse. She went to the school attendance office in an attempt to be excused. She talked with Mr. Richard Kollmer, assistant principal, who told her that she had to go to class. She told Mr. Kollmer that her mother had told her to go home if there were continuing tensions in the school. Mr. Kollmer told her "Well, you are suspended anyway."

Susan further testified that she met her mother on her way home. She and her mother returned to the school. They waited to talk with Mr. Kollmer but he was unavailable. Mr. Gill, another assistant principal, told them to go home for 10 days, and that when she came back they could have a conference. She was not given an opportunity to tell her side of the story.

Mr. Gill sent Mrs. Cooper the following letter dated March 16, 1971:

> Dear Mrs. Cooper:
>
> I have suspended Susan, your daughter, from Marion-Franklin High School until Thursday, March 25. I will reserve 11:00 a.m. on this day for a conference with you and your daughter.
>
> Susan was involved in the disturbance at school on Monday, March 15, at which time she showed a lack of respect for the principal.
>
> During the suspension period, your daughter is to remain at home during school hours, and not

attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,
OSCAR R. GILL,
Assistant Principal

Susan further testified that following the 10 day suspension, she returned to Marion-Franklin High School with her mother, at which time they had a conference with the principal or an assistant principal. The facts leading up to the suspension were not discussed in any detail.

Susan Cooper was not permitted to make up any work she missed during the 10 day suspension. During the 1971-1972 school year Susan was elected homecoming queen of Marion-Franklin High School. She graduated in June, 1972.

Mr. Fulton, the principal at Marion-Franklin High School, testified that on March 15, 1971, he ordered Miss Cooper to go to class, but that she refused. Mr. Fulton further testified that she was insolent and encouraged other students not to obey his order to go to class.

OTHER STUDENTS

The named plaintiffs, Tyrone Washington, Clarence Byars, Rudolph Sutton, Bruce Harris and Carl Smith did not testify at the hearing before the single-Judge District Court. No evidence was offered in their behalf.

Mr. Fulton, the principal of Marion-Franklin High School gave deposition testimony regarding the suspensions of Tyrone Washington, Clarence Byars, Rudolph Sutton, and Bruce Harris.

Mr. Fulton testified that on Monday, March 15, 1971,

at approximately 9:00 a.m., there were disturbances in the eight to ten homerooms which were held in the school auditorium. When the disrupting students were notified that if they did not return to their homerooms, they would be suspended, they voluntarily went to their homerooms.

When the class bell rang for the first morning period, a group of black students entered the auditorium and refused to leave. The auditorium was scheduled to be used as a classroom during the first period. The group of students three times refused to obey an order to leave. One of the students, Tyrone Washington, told Principal Fulton that they (the students) were tired of listening to him and that now it was his turn to listen to them. Tyrone Washingon further told Principal Fulton that they (the students) were going to tell him what was to be done. The principal suspended Tyrone Washington for disrupting the educational program. Washington was removed from the auditorium by two plain-clothed policemen.

Oscar Gill, an assistant principal at Marion-Franklin High School, sent a letter dated March 16, 1971 to the parents of Tyrone Washington:

> Dear Parents:
>
> I have suspended Tyrone, your son, from Marion-Franklin High School until Thursday, March 25. The Pupil Personnel Department of the Columbus Board of Education will notify you concerning a disposition of this case.
>
> Tyrone was involved in a disturbance at school on Monday, March 15. He defiantly refused to follow the directions of the principal. Furthermore, he created an explosive situation.
>
> During his suspension, your son is to remain at home during school hours, and not attend Marion-

Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,
OSCAR R. GILL,
Assistant Principal

School records indicate that Tyrone Washington was graduated from Marion-Franklin High School on June 6, 1971. The school records contain the following information under the heading "Additional Test Resuts — Comments": "3-15-71 Suspended for school disruption".

Mr. Fulton further testified that while Tyrone Washington was being removed from the auditorium Rudolph Sutton attacked a police officer. Sutton was then suspended from school. On March 16, 1971, Mr. Gill, an assistant principal, had a conference with Rudolph Sutton, his parents and his sister. Another conference was held on March 25, 1971 with Rudolph Sutton and his family.

On March 23, 1971, Rudolph Sutton was transferred from Marion-Franklin High School to South High School. He was graduated from South High School on June 6, 1971. Under the heading "Additional Test Results — Comments" the following entry appears on his school records: "3-18-71 Suspended for school disruption".

Mr. Fulton testified that Clarence Byars was in the halls of Marion-Franklin High School on March 15, 1971 and refused an order to go to class. Further, Mr. Fulton testified that Clarence Byars encouraged other students to refuse to go to class. Mr. Fulton then called Clarence Byars' mother and conferred with her on the telephone. Clarence Byars was suspended from school on March 15, 1971.

Richard Kollmer, assistant principal at Marion-Frank-

lin High School, wrote the following letter to Clarence Byars' parents dated March 15, 1971:

> Dear Parents:
>
> I have suspended Clarence from Marion-Franklin High School until Thursday, March 18. I will reserve 9:00 a.m. on this day for a conference with you and your son.
>
> Clarence refused to go to class as directed, was disrespectful with the principal, and was inciting a school disruption.
>
> During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.
>
> Sincerely,
> RICHARD KOLLMER,
> *Assistant Principal*

Columbus Public School records indicate that Clarence Byars was graduated from Marion-Franklin High School on June 11, 1972. Clarence Byars' school file also contains a copy of the March 15, 1971 letter from Assistant Principal Richard Kollmer, notifying his parents of his suspension from high school.

Mr. Fulton testified that on March 23, 1971, during the course of an assembly in the Marion-Franklin High School auditorium Bruce Harris and several other black students stood up, turned their backs to the assembly speaker, and gave the "Black Pledge". Bruce Harris was suspended for disrupting the assembly program.

Mr. Fulton testified that he attempted to contact Bruce Harris' brother, who acted as his guardian, but was unable to do so. Bruce Harris did not return to school on March 30, 1971 when his suspension was terminated. The following letter was sent by Assistant Prin-

cipal Oscar R. Gill dated March 23, 1971 to Bruce Harris' brother:

> Dear Mr. and Mrs. Robinson:
>
> I have suspended Bruce, your brother, from Marion-Franklin High School until Tuesday, March 30.
>
> During the suspension the Pupil Personnel Department of the Columbus Board of Education will review with you the contents of the letter of November 6, 1970.
>
> Bruce disrupted the assembly and walked out of the assembly during this morning. This he did after the principal made clear that if a student did, he would be suspended.
>
> During the suspension period, your brother is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at home.
>
> Sincerely,
> OSCAR R. GILL,
> *Assistant Principal*

Records of the Columbus Public School system indicate that Bruce Harris graduated from the evening high school on June 14, 1972. There is no indication in his official school records that he was suspended from Marion-Franklin High School.

There was no testimony regarding Carl Smith's suspension from the Columbus Public Schools. Carl Smith's Columbus Public School's file indicates that he was graduated from Columbus Evening High School on June 14, 1972. There is no indication in the school records submitted to the Court that plaintiff was suspended from high school in March of 1971. There is an indication that he was withdrawn from Central High School on March 31, 1971 because he was over-age.

In addition to the above facts found by the single-Judge United States District Court and adopted by the Three-Judge United States District Court, the parties entered into a stipulation of fact filed with the Court on October 10, 1972. A copy of the stipulation of fact is attached as an appendix to the Court's finding of facts.[3]

Norval Goss, present Director of Pupil Personnel of the Columbus Public Schools, compiled a chart of the named plaintiffs' cumulative academic record. He drew the conclusion that plaintiffs' suspensions had no effect on their academic achievement as reflected in their grade point averages.[4]

Mr. Goss testified that students receive zeros for work missed during a suspension. They are not accorded the opportunity to make up the work. Mr. Goss conceded that any absence from school may have negative educational effects.

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[3]On May 25, 1973, counsel for defendants filed a motion to withdraw the stipulation on the ground that the defendants were then informed that a hearing was going to be held on the factual issues and that plaintiffs should be put to the burden of proving the allegations contained in their complaint. The Court notes that the facts contained in the stipulation were all proven by the testimony and exhibits offered at the hearing before the single-Judge District Court. Basically, the stipulation itself was skeletal in nature. The facts conceded by defendants were those contained in letters from school administrators to suspended students and their parents and notations in students' official Columbus Public School records. There is no indication in the memorandum in support of the motion to strike the stipulation that any matters contained in the stipulation were untrue. Thus, the facts in the stipulation would be subject to a request for admissions under Rule 36(a), Fed. R. Civ. P. Additionally, the Court notes that defendants in their answer admitted almost every fact contained in the stipulation. All of paragraphs 5, 7, 8, 9, 10 and 13 of the stipulation are admitted. Paragraph 1 is admitted, except for the seventh sentence thereof. Paragraph 2 was admitted, except for Betty J. Crome's age. Paragraph 3 was admitted, except for the third and fifth sentences. Paragraphs 4, 6, 11, 12, 14 and 15 of the stipulation are not admitted by the answer. Upon consideration, and being fully advised, the Court HOLDS that the motion is without merit, and therefore it is DENIED.

Defendant's Exhibit B is attached to the findings of fact and made a part of this Opinion and Order as if fully written herein.

Plaintiffs presented evidence that suspension from school results in psychological harm to the student. The effects of suspension are not uniform. Most suspended students respond in one or more of the following ways:

1. The suspension is a blow to the students' self-esteem.
2. The student feels powerless and helpless.
3. The student views school authorities and teachers with resentment, suspicion and fear.
4. The student learns withdrawals as a mode of problem solving.
5. The student has little perception of the reasons for the suspension. He does not know what offending acts he committed.
6. The student is stigmatized by his teachers and school administrators as a deviant. They expect the student to be a troublemaker in the future.

A student's suspension may also result in his family and neighbors branding him a troublemaker. Ultimately repeated suspension may result in academic failure.

APPENDIX

	1967-68		1968-69		1969-70		1970-71		1971-72		1972-73		
	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Credits earned	Point average	Final point average
Byars, Clarence			5.9	2.70	5.7	2.67	5.1	2.63	4.0	2.00			2.559
Cooper, Susan			4.7	1.98	5.7	1.91	5.1	1.80	2.5	2.20			1.933
Crome, Betty							(2.8)	.79	(2.2)	.71	4.2	1.00	
Fox, Deborah					4.7	2.04	5.7	1.91	5.0	1.36	1.5	3.66	2.087
Harris, Bruce	4.2	1.33	3.2	.76	2.6	.63	2.5	1.17	4.0	1.89			1.074
Lopez, Dwight	4.2	1.33	.2	.04	5.6	.85	3.0	1.66	4.0	2.11			1.037
Smith, Carl	4.7	1.19	1.0	.19	4.2	1.09	2.7	1.90	4.4	1.77			1.258
Sutton, Rudolph	4.2	1.57	5.9	1.68	4.6	2.28	4.0	1.75					1.818
Washington, Tyrone	4.8	2.00	3.7	1.40	4.2	2.00	5.5	2.09					1.861

CONCLUSIONS OF LAW

The Three-Judge Court adopts in full the factual findings of the single-Judge District Court. The factual issues having been resolved, the case is now before the Three-Judge Court for decision of the legal questions presented. Before reaching the constitutional questions presented, several procedural and jurisdictional issues must be considered.

CLASS ACTION

Plaintiffs seek to maintain this action "on behalf of all other students residing in the City of Columbus who are similarly situated and affected by the policy and usage complained of" in the complaint.

The prerequisites of a class action are that:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
> Rule 23(a), FED. R. CIV. P.

When the class is limited to all students of the Columbus Public Schools suspended on or after February, 1971, the class alleged satisfies each of these prerequisites. The Court determines that the class action is maintainable under the provisions of Rule 23(b) (2) in that the Columbus Public Schools and their employees have acted in accordance with §3313.66, Ohio Revised Code and guidelines established by the Department of Pupil Personnel in all suspensions.

JURISDICTION OVER THE SUBJECT MATTER

Title 42, United States Code, Section 1983 provides, in revelant part, that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The complaint alleges that §3313.66, Ohio Revised Code, which provides that a "principal of a public school may suspend a pupil from school for not more than ten days" with a provision for notice to the student's parents and the clerk of the Board of Education, is unconstitutional.

Defendants argue that §3313.66, Ohio Revised Code is not the source of a principal's authority to suspend a student. Rather, defendants assert in their brief that "a school board and the local school officials possess historical inherent power" to discipline students.[1] Section 3313.66, Ohio Revised Code, defendants argue, is not a source of authority, but a limitation on school authorities' inherent power to discipline students. Defendants contend that because they were acting pursuant to their

[1]Defendants cite *Rumler* v. *Board of School Trustees*, 327 F.Supp. 729, 737 (D. S. C. 1971), *affirmed* 437 F.2d 953 (4th Cir. 1971), and the cases cited therein, in support of the inherent power of school officials to discipline students. See also, *Tate* v. *Board of Education*, 453 F.2d 975, 978-978-979 (8th Cir. 1972); *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195, 200 (6th Cir. 1969), *cert. denied* 399 U.S. 906 (1970); *Esteban* v. *Central Missouri State College*, 415 F.2d 1077, 1088 (8th Cir. 1969), *cert. denied* 398 U.S. 965 (1970); *Banks* v. *Board of Public Instruction*, 314 F.Supp. 285, 290 (S.D. Fla. 1970), *affirmed* 450 F.2d 1103 (5th Cir. 1970)), *vacated to permit timely filing of notice of appeal*, 401 U.S. 988 (1971); *Jones* v. *State Board of Education*, 279 F.Supp. 190, 202 (M.D. Tenn. 1968), *affirmed* 407 F.2d 834 (6th Cir. 1969), *cert. dismissed as improvidently granted* 397 U.S. 31 (1970), *rehearing denied* 397 U.S. 1018 (1970). *But see*, *Soglin* v. *Kauffman*, 418 F.2d 163, 167 (7th Cir. 1969). The Court in *Rumler* rejected plaintiffs' argument that they were denied due process of law when they were suspended without the protection of due procedural safeguards. However, the Court did not suggest that it was without subject matter jurisdiction to entertain the claim for relief under 42 U.S.C. §1983. Indeed, the Court denied the claim on the merits.

inherent authority and not under color of state law pursuant to Section 3313.66, the complaint fails to establish that the Court has jurisdiction over the subject matter.[6] Article 6, §3 of the Ohio Constitution commands that:

> Provision shall be made by law for the organiation, administration and control of the public school system of the state supported by public funds. . . .

The Ohio Legislature has established school districts, Chapter 3311, Ohio Revised Code, which provide free public elementary and secondary education for every Ohio resident between the ages of six and 21 years.[7] Although imprecise usage has lead to the misconception that the power to discipline is "inherent", see 48 O.Jur. 2d Schools, §176, the power to discipline students is actually mandated by Section 3313.20, Ohio Revised Code, which provides in relevant part:

> The board of education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises. . . .

It is well-recognized in Ohio that boards of education are purely creatures of statute whose powers and duties are limited by the Legislature. *Verberg* v. *Board of Education*, 135 Ohio St. 246, 248 (1939); *Perkins* v. *Bright*, 109 Ohio St. 14, 21 (1923); *State ex rel. Clarke* v. *Cook*, 103 Ohio St. 465, 467 (1921).

When defendants acted to suspend plaintiffs they were acting under the color of Article 6, §3 of the Ohio Constitution, legislation implementing Article 6, §3, and the

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[6] In their motion to dismiss defendants argue on similar grounds that the complaint fails to allege facts stating a cause of action. There has been a trial of the factual issues before a single-Judge, therefore the three-Judge Court will dtermine the issues on the merits, not by motion to dismiss.

[7] §3321.01, Ohio Revised Code.

rules and regulations adopted by the school board and its delegates pursuant to §§3313.20 and 3313.66, Ohio Revised Code. There is no merit to defendants' contention that they were not acting under color of state law within the meaning of 42 U.S.C. §1983.

JURISDICTION OVER THE PERSON

Defendant Board of Education argues that the Court does not have jurisdiction over it, because it is not a "person" within the meaning of 42 U.S.C. §1983.[8]

Under Ohio law a board of education is a "body politic and corporate" which is "capable of suing and being sued". Section 3313.17, Ohio Revised Code. Even though it is not immune from suit,[9] an Ohio board of education is a political subdivision of the State. *See*, *Brown* v. *Board of Education*, 20 Ohio St. 2d 68, 71-72 (1969).

In *Monroe* v. *Pape*, 365 U.S. 167, 187-192 (1961), the Supreme Court held that a city was not amenable to a suit for damages under the provisions of 42 U.S.C. §1983 because the legislative history of the Civil Rights Act of 1871 demonstrated a Congressional intent that political subdivisions of a State not be included within the definition of a "person" under the Act.

Subsequent to the decision many federal courts recognized a distinction between suits for damages, which were barred by *Monroe* v. *Pape*, and suits for declaratory and injunctive relief, which were considered actionable. *See*,

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[8]Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . ., subjects or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[9]Whether a board of education is a sovereign arm of the State cloaked with immunity which the State has waived or an entity which is not entitled to immunity because it is not sovereign is an unresolved question in Ohio. *Cf. Board of Education* v. *Volk*, 72 Ohio St. 469 (1905) with *State* v. *Gibson*, 130 Ohio St. 318, 322 (1935).

e.g., *Dailey* v. *City of Lawton*, 425 F.2d 1037 (10th Cir. 1970); *Schnell* v. *City of Chicago*, 407 F.2d 1084 (7th Cir. 1968); *Atkins* v. *City of Charlotte*, 296 F. Supp. 1068 (W.D. N.C. 1969); *Cf. Monroe* v. *Pape*, 365 U.S. *supra* at 191, n. 50.[10] Applying this rationale some courts have held that a school board is a "person" within the meaning of 42 U.S.C. §1983 when the complaint seeks equitable relief only, and not damages. *Butts* v. *Dallas Independent School District*, 436 F.2d 728, 729 (5th Cir. 1971); *Harkless* v. *Sweeny Independent School District*, 427 F.2d 319 (5th Cir. 1970), *cert. denied* 400 U.S. 991 (1971); *Williams* v. *San Francisco Unified School District*, 340 F.Supp. 438, 438-439 (N.D. Calif. 1972); *Schreiber* v. *Joint School District No. 1*, 335 F.Supp. 745, 747 (E.D. Wis. 1972); *Callaway* v. *Kirkland*, 334 F.Supp. 1034, 1036-1037 (N.D. Ga. 1971); *Henson* v. *City of St. Francis School District*, 322 F.Supp. 1034 (E.D. Wisc. 1971); *Local 858 of A.F. of T.* v. *School District No. 1*, 314 F.Supp. 1069 (D. Colo. 1970); *Abel* v. *Gousha*, 313 F.Supp. 1030 (E.D. Wisc. 1970); *Porcelli* v. *Titus*, 302 F.Supp. 726 (D. New Jersey 1969); *Adams* v. *School Board*, 53 F.R.D. 267 (M.D. Pa. 1971). *See, Lee* v. *Board of Regents*, 441 F.2d 1257 (7th Cir. 1971). A number of other courts have held that a school board is not a "person" under the provisions of 42 U.S.C. §1983 regardless of the nature of the relief sought. *Kerr* v. *Clarenceville School District*, 344 F.Supp. 1244, 1246 (E.D. Mich. 1972); *Webb* v. *Lake Mills Community School District*, 344 F.Supp. 791, 807 (N.D. Iowa 1972); *Hayes* v. *Cape Henlopen School District*, 341 F.Supp. 823 (D. Del.

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[10]Since the decision in *Monroe* v. *Pape* the United States Supreme Court has decided many cases in which equitable relief was sought under 42 U.S.C. §1983 against a state, city, or school board, without discussion of whether they are "persons" under the Act. *See, e.g., Baker* v. *Carr*, 369 U.S. 186 (1962); *Reynolds* v. *Sims*, 377 U.S. 713 (1964); *Raney* v. *Board of Education*, 391 U.S. 443 (1968); *Tinker* v. *Des Moines*, 393 U.S. 503 (1969); *Boddie* v. *Connecticut*, 401 U.S. 371 (1971); *Broadrick* v. *Oklahoma*, ... U.S. ..... (1973); *San Antonio Independent School District* v. *Rodriguez*, ... U.S. ..... (1973).

1972); *Gruelich* v. *Mounds View Independent Public School District*, 334 F.Supp. 1276, 1279 (D. Minn. 1972); *Conway* v. *Alfred I. DuPont School District*, 333 F.Supp. 1217, 1218 (D. Del. 1971); *Blount* v. *Ladue School District*, 321 F.Supp. 1245, 1250 (E.D. Mo. 1970); *Morey* v. *Independent School District*, 312 F.Supp. 1257 (D. Minn. 1969), *affirmed* 429 F.2d 428 (8th Cir. 1970); *Patton* v. *Bennett*, 304 F.Supp. 297, 299 (E.D. Tenn. 1969). Although the Sixth Circuit has not ruled on the exact question, it has taken the general position that political subdivisions of a state are not "persons" within the meaning of 42 U.S.C. §1893 regardless of the nature of the relief sought. *See, Deane Hill Country Club, Inc.* v. *City of Knoxville*, 379 F.2d 321, 323-324 (6th Cir. 1967).

Two recent United States Supreme Court decisions leave little doubt as to the proper resolution of the issue presented. In *Moore* v. *County of Alameda*, ___ U.S. ___, 41 U.S.L.W. 4627 (1973), the Supreme Court held that a county was not a "person" within the meaning of 42 U.S.C. §1983 because it was not Congress' intention "to impose liability on political subdivisions of the States." In *City of Kenosha* v. *Bruno*, ___ U.S. ___, 41 U.S.L.W. 4819 (1973), the Supreme Court held that Congress did not intend a distinction between actions for money damages and those for injunctive and declaratory relief in defining the word "person" in 42 U.S.C. §1983. Thus, if a governmental entity is a political subdivision of a State, it is not a "person" within the meaning of 42 U.S.C. & 1983 regardless of whether the suit is for legal or equitable relief.

The Columbus Board of Education is a political subdivision of the State of Ohio, and is, therefore, not a "person" within the meaning of 42 U.S.C. §1983. The Court HOLDS that the motion to dismiss the defendant,

Columbus Board of Education, is meritorious, and therefore GRANTED.

Defendants further argue that if the Court does not have jurisdiction over the Columbus Board of Education, it cannot rule on the constitutionality of Section 3313.66, Ohio Revised Code and the regulation adopted pursuant to that section.

The United States Supreme Court in *Ex parte Young*, 209 U.S. 123, 159-160 (1908) stated the theory of liability under §1983:

> If the act which the state Attorney General seeks to enforce be a violation of the Federal Constitution, the officer in proceeding under such enactment comes into conflict with the superior authority of the Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the Supreme authority of the United States.

The named defendants acted under authority of State law as employees of the Columbus Board of Education. If the State law or their actions under color of that law deprived plaintiffs of their constitutional rights, the deprivation is actionable under §1983.

Defendants argue that only the Columbus Board of Education has the authority to abandon the present disciplinary procedures, and therefore the Court has no jurisdiction to declare the constitutionality of the statute and regulations and to enjoin their enforcement.

The Columbus School Board has no authority to license its employees to violate the United States Constitution. If an employee of the Columbus Board of Education acts, under the authority of state law and regula-

tions adopted pursuant thereto, in such a manner as to deprive someone of his constitutional rights, this Court has the power to declare the statute and regulations a nullity and to enjoin the employee from acting under the unconstitutional statute to deprive anyone of his constitutional rights. *Ex parte Young, supra.*

MOOTNESS

Defendants argue that the suspension guidelines adopted by the Department of Pupil Personnel on July 10, 1973 moot the constitutional question presented.

The new guidelines have no impact upon the constitutional claims of the named plaintiffs or of any member of the class they represent who was suspended prior to July 10, 1973.[11] If their suspensions were imposed without due process of law, they have a right to a declaration that the suspension procedure was unconstitutional and to the expunction of any reference to the suspension from all records maintained by the Columbus Public Schools. There is a present, live controversy, and not a moot action *See, Golden* v. *Zwickler*, 394 U.S. 103, 110 (1969).

EXHAUSTION OF STATE COURT REMEDIES — ABSTENTION

Defendants contend that plaintiffs should have contested their suspensions and the constitutionality of §3313.66, Ohio Revised Code in the State courts of Ohio.[12]

There is no requirement under 42 U.S.C. §1983 that State court[13] remedies be exhausted prior to seeking

[11]Plaintiffs have not engaged in conduct which would subject them to the newly adopted suspension procedures. Thus, they cannot sue on their own behalf or on the behalf of others for relief from the newly adopted suspension procedures. *See, Hall* v. *Beals*, 396 U.S. 45, 48-49 (1963).

[12]Defendants suggest the suspensions were reviewable under the provisions of §2506.01, Ohio Revised Code.

[13]More accurately, the doctrine of exhaustion applies to administrative, not judicial, remedies. *Gibson* v. *Berryhill*, ... U.S. ..... (1973 (slip opinion p. 10, n. 13.

federal relief. *Preiser* v. *Rodriguez*, U.S. (1973) (slip opinion pp. 1-2); *Houghton* v. *Shafer*, 392 U.S. 639 (1968); *King* v. *Smith*, 392 U.S. 309, 312 n. 4 (1968); *Damico* v. *California*, 389 U.S. 416 (1967); *McNeese* v. *Board of Education*, 373 U.S. 668, 671 (1963); *Monroe* v. *Pape*, 365 U.S. 167, 183 (1961).

Defendants also argue that the Court should abstain from determining the constitutionality of §3313.66, Ohio Revised Code, to permit the Ohio court to have the first opportunity to construe its terms. *See, Gibson* v. *Berryhill*, U.S. (1973); *Younger* v. *Harris*, 401 U.S. 37 (1971); *Samuels* v. *Mackell*, 401 U.S. 66 (1971); *Boyle* v. *Landry*, 401 U.S. 77 (197); *Perez* v. *Ledesma*, 401 U.S. 82 (1971); *Dyson* v. *Stein*, 401 U.S. 200 (1971); *Byrne* v. *Karalexis*, 401 U.S. 216 (1971).

The Civil Rights Act of 1871 was intended by Congress to provide a federal remedy for the deprivation of constitutional rights which was supplementary to state remedies. *Monroe* v. *Pape*, 365 U.S. *supra* at 183. The federal remedy is not dependent upon a State remedy.

In the present case plaintiffs have no remaining administrative remedies. Their remedy, if any, is State court review of the administrative action resulting in their suspensions. Under such circumstances a federal court should not abstain from considering the constitutionality of a state statute. *See, Gibson* v. *Berryhill*, U.S. (1973) (slip opinion p. 13).

PROCEDURAL DUE PROCESS

The Fourteenth Amendment to the Constitution of the United States provides that no State shall:

> deprive any person of life, liberty, or property, without due process of law. . . .

The right to procedural due process applies to a broad spectrum of important private and governmentally

created interests. *See, e.g., Vlandis* v. *Kline*, ___ U.S. ___, 41 U.S.L.W. 4796 (1973) (Education. Proof of residence for entitlement to in-state fee rates); *Morrissey* v. *Brewer*, 408 U.S. 471 (1973) (Parole. Revocation of parole without hearing); *Stanley* v. *Illinois*, 405 U.S. 645 (1972) (Child custody. Father denied custody without fitness hearing); *Bell* v. *Burson*, 402 U.S. 535 (1971) (Driver's license. Uninsured motorists driver's license suspended without hearing unless security posted following accident); *Wisconsin* v. *Constantineau*, 400 U.S. 433 (1971) (Reputation. Public posting of notice person not to be sold liquor); *Goldberg* v. *Kelly*, 397 U.S. 254 (1970) (Welfare benefits. Welfare benefits terminated without prior notice and hearing); *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969) (Wages. Wages garnisheed without notice or opportunity to defend); *Slochower* v. *Board of Education*, 350 U.S. 551 (1956) (Public employment. Teacher discharged without notice and hearing.)

When presented with an allegation that due process has been denied, the Court must first determine whether the interest left unprotected falls within the ambit of a liberty or property within the meaning of the Fourteenth Amendment. This is an inquiry into the *nature* of the interest at stake, not its *weight*. If it is a protected interest, the Court then looks at the weight of the interest and the extent of its deprivation to determine what process is due. *Board of Regents* v. *Roth*, 408 U.S. 564, 570-571 (1972); *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972).

The concept of liberty includes

> not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire

> useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.
> *Meyer* v. *Nebraska,* 262 U.S. 390, 399 (1923).

Those interests included within the concept of liberty are not limitless, but the United States Supreme Court has recognized that

> In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed. *Board of Regents* v. *Roth,* 408 U.S. *supra* at 572. [citations omitted]

The Supreme Court has not resolved the question of whether a student's statutory right[14] to an education is a liberty which is protected by due process of law. The Supreme Court has frequently referred to the importance of education in the American system of government. In *Brown* v. *Board of Education* the Court noted that:

> education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later

[14]In Ohio primary and secondary education is given free to all school district residents between the ages of six and 21 years. Section 3321.01, Ohio Revised Code. School attendance is compulsory between the ages of six and 18 years. Section 3313.64, Ohio Revised Code.

professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. 347 U.S. 483, 493 (1954).

See, *San Antonio Independent School District* v. *Rodriguez*, ____ U.S. ____ 41 U.S.L.W. 4407, 4416 (1973); *Wisconsin* v. *Yoder*, 406 U.S. 205, 213 (1972); *Abington School District* v. *Schempp*, 374 U.S. 203, 230 (1963) (Brennan J., concurring); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *Meyer* v. *Nebraska*, 262 U.S. 390 (1923); *Williams* v. *Dade County School Board*, 441 F.2d 299, 302 (5th Cir. 1971); *Sullivan* v. *Houston Independent School District*, 333 F.Supp. 1149, 1172 (S.D. Tex. 1971); *Ordway* v. *Hargraves*, 323 F.Supp. 1155, 1158 (D. Mass. 1971); *Hosier* v. *Evans*, 302 F.Supp. 316, 319 (D. St. Croix 1970).

Recently in *San Antonio School District* v. *Rodriguez*, —— U.S. ——, 41 U.S.L.W. 4407 (1973) the Supreme Court was presented with the question of whether differential State aid to local school districts violates the equal protection clause of the Fourteenth Amendment. The Court, in determining whether the rational basis test, *United States* v. *Moreno*, —— U.S. ——, 41 U.S.L.W. 5105 (1973); *Gomez* v. *Perez*, —— U.S. —— 41 U.S.L.W. 4174 (1973); *United States* v. *Kras*, —— U.S. ——, 41 U.S.L.W. 4117 (1973); *Jefferson* v. *Hackney*, 406 U.S. 535, 546 (1971); *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164, 172-173 (1972); *Richardson* v. *Belcher*, 404 U.S. 78, 81 (1971); *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970); *McGowan* v. *Maryland*, 366 U.S. 420, 426 (1961); *Morey* v. *Doud*, 354 U.S. 457, 465-466 (1957); *Williamson* v. *Lee Optical Co.*, 348 U.S. 483 (1955); *Gulf, Colorado & Santa Fe Ry* v. *Ellis*, 165 150 (1896); *Yick Wo.* v. *Hopkins*, 118 U.S. 356, 373-374

(1886), or the compelling state interest test, *Dunn* v. *Blumstein*, 405 U.S. 330, 342-343 (1972); *Shapiro* v. *Thompson*, 394 U.S. 618, 634, 638 (1969); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966); *Brown* v. *Board of Education*, 347 U.S. 483 (1954), should be applied to the legislative scheme, stated that the right to an education was not explicitly or implicitly guaranteed by the Constitution. Consequently, the Court applied the rational basis test, not the compelling state interest test. *San Antonio School District* v. *Rodriguez*, —— U.S. *supra at* ——, 41 U.S.L.W. *supra* at 4416.

The Supreme Court's holding that the right to an education is not explicitly or implicitly guaranteed by the Constitution does not affect the determination of whether it is a liberty or property which cannot be interfered with by the State without the protection of due procedural safeguards. As noted above, interests included within the concepts of liberty and property are often rights created by the State which have no Constitutional status.[15]

The question presented is whether the State created right to an education is a protected liberty under the Fourteenth Amendment's due process clause.[16]

Since the decision in *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir 1961) the lower federal courts have without exception recognized that a student has the due process right to notice and hearing prior to expulsion or suspension from school for a substantial period of time. *Woods* v. *Wright*, 334 F.2d 369

[15]See, pp 30-31, *supra*.

[16]The right to an education is not an interest traditionally considered to be within the concept of "property", even though an education undoubtedly has an economic as well as an intangible value. However, governmental entitlements in our modern society often take on the incidents of property. *See generally*, Reich, *The New Property*, 73 YALE L.J. 733 (1964).

(5th Cir. 1964); *Esteban* v. *Central Missouri State College* 415 F.2d *supra* at 1089; *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195, 200 (6th Cir. 1969), *cert. denied*, 399 U.S. U.S. 906 (1970); *Williams* v. *Dade County School Board*, 441 F.2d 299, 301-302 (5th Cir. 1971); *Esteban* v. *Central Missouri State College*, 277 F. Supp. 649, 651-652 (W.D. Mo. 1967); *Jones* v. *State Board of Education of Tennessee*, 279 F.Supp. 190, 198 (M.D. Tenn. 1968), *affirmed*, 407 F.2d 834 (6th Cir. 1969) *cert. dismissed as improvidently granted* 397 U.S. 31 (1970), *rehearing denied*, 397 U.S. 1018 (1970); *Stricklin* v. *Regents of the University of Wisconsin*, 297 F.Supp. 416 (W.D. Wisc. 1969); *Sullivan* v. *Houston Independent School District*, 307 F.Supp. 1328, 1337 (S.D. Tex. 1969); *Hobson* v. *Bailey*, 309 F.Supp. *supra* at 1401-1402; *Sullivan* v. *Houston Independent School District*, 333 F.Supp. 1149 (S.D. Tex. 1971); *DeJesus* v. *Penderthy*, 344 F.Supp. 70, 74-75 (D. Conn. 1972). Although suspension from school for a short period of time as opposed to a lengthy suspension or expulsion is a lesser interference with the right to education, the due process clause of the Fourteenth Amendment still cloaks the student. *Tate v. Board of Education of Jonesboro Arkansas*, 453 F.2d *supra* at 979; *Farrell* v. *Joel*, 437 F.2d 160, 162 (2d Cir. 1971); *Esteban* v. *Central Missouri State College*, 415 F.2d *supra* at 1089; *Madera* v. *Board of Education of the City of New York*, 386 F.2d 778, 784-785 (2d Cir. 1967). No Court faced with the question has held that the right to an education is not within the concept of "liberty".

It is important to remember that even though the interference with the liberty of a right to education is limited, the student's right treated with procedural fairness prior to a deprivation of the right to an education

is not lost. The magnitude of the deprivation affects the formality and comprehensiveness of the due process safeguards; it does not affect the basic fact that these safeguards shield the student from arbitrary or capricious interference with his right to education. In *Board of Regents* v. *Roth*, 408 U.S. 564, 470-571 fn. 7 and 8 Justice Blackmun discussed the applicability of procedural due process to protected Fourteenth Amendment liberties:

> Before a person is deprived of a protected interest, he must be afforded opportunity for some kind of a hearing 'except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event'. *Boddie* v. *Connecticut*, 401 U.S. 371, 379. While '[m]any controversies have raged about . . . the due process clause' . . . it is fundamental that except in emergency situations (and this is not one) due process requires that when a state seeks to terminate [a protected] interest . . ., it must afford 'notice and opportunity for hearing appropriate to the nature of the case' *before* the termination becomes effective *Bell* v. *Burson*, 402 U.S. 535, 542. For the rare and extraordinary situations in which we have held that deprivation of a protected interest need not be preceded by opportunity for some kind of a hearing, *See e.g., Central Union Trust Company* v. *Garvan*, 254 U.S. 554, 566; *Phillips* v. *Commissioner*, 283 U.S. 589, 597; *Ewing* v. *Mytinger and Casselbery, Inc.*, 339 U.S. 594.
>
> Formality and procedural requisites of a hearing vary with the relative importance of interests involved and the nature of the subsequent proceedings. *Boddie* at 378. But the constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest, of course,

does not depend upon such a narrow balancing process.

If education is a protected liberty when expulsion is involved, then it remains a liberty when suspension occurs. The right to an education is the interest being afforded procedural protection. It either is, or is not a liberty under the Fourteenth Amendment. The difference between expulsion and suspension becomes important only when the Court confronts the question of what process is due to protect the Fourteenth Amendment liberty.

Considering the importance of education in our society today, the Court HOLDS that the State created entitlement to an education is a liberty protected by the due process clause of the Fourteenth Amendment.

The Court now turns to the more difficult question of what process is due a student before the State may deprive him of his right to an education by imposing a suspension not to exceed 10 days.

The primacy of the educator in the school has been unquestioned by the Courts. The Courts have consistently reaffirmed the right of school administrators to manage their school systems without interference from the Courts, so long as the basic commands of the Constitution are honored.

The Courts have repeatedly emphasized the need for affirming the comprehensive authority of the states and of school officials consistent with fundamental constitution safeguards, to prescribe and control conduct in the schools. *Tinker* v. *DesMoines School District*, 393 U.S. 503, 507 (1969). *See also*, *Epperson* v. *Arkansas*, 393 U.S. 97, 104 (1968); *Bright* v. *Nunn*, 448 F.2d 245 (6th Cir. 1971); *Robinson* v. *Board of Regents*, No. 72-1867 (6th Cir. March 28, 1973); *Tate* v. *Board of Education of Jonesboro, Blackwell* v. *Issaquena City Board of Educa-*

tion, 363 F.2d 749, 753 (5th Cir 1966); *Jackson* v. *Dorrier*, 424 F. 2d 213, 218-219 (6th Cir. 1970), *cert. denied*, 400 U.S. 950 (1970); *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195 (6th Cir. 1969); *Banks* v. *Board of Public Instruction of Dade County*, 314 F.Supp. 285, 289 (S.D. Fla. 1970), *affirmed*, 450 F.2d 1103 (5th Cir. 1971) *vacated to permit timely filing of appeal*, 401 U.S. 988 (1971).

The Courts have vigorously asserted the right, and indeed the duty of school administrators to prohibit student behavior which materially disrupts classwork, endangers property or interferes with the rights of other students. *Tinker* v. *Des Moines School District*, 393 U.S. *supra* at 513; *Soglin v. Kauffman*, 418 F.2d 163, 167 (7th Cir. 1969); *Esteban* v. *Central Missouri State College*, 415 F.2d 1077, 1087 (8th Cir. 1969); *Gardenhire* v. *Chalmers*, 326 F.Supp. 1200, 1202 (D. Kan. 1971); *Hobson* v. *Bailey*, 309 F. Supp. 1393, 1400 (W.D. Tenn. 1970); *General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Learning*, 45 F.R.D. 133, 141 (W.D. Mo. *en banc* 1968). Remembering that school officials are better suited to make decisions affecting their institutions, the Court nonetheless is Constitutionally bound to insure that the student be afforded the minimum procedural process mandated by the Constitution.

The nature of the due process protection of the right of education is dependent on the severity of the sanction. *Tate* v. *Board of Education of Jonesboro Arkansas*, 453 F.2d *supra* at 979; *Farrell* v. *Joel*, 437 F.2d *supra* at 162; *Jackson* v. *Hepinstall*, 328 F.Supp. 1104, 1106 (N.D. N.Y. 1971); *Rumler* v. *Board of School Trustees for Lexington County*, 327 F. Supp. 729, 744 (D. S.C. 1971), *affirmed* 437 F.2d 953 (4th Cir. 1971); *Gardenhire* v. *Chalmers*,

326 F. Sup., *supra* at 1203. When the sanction is a short suspension as opposed to a lengthy suspension or expulsion, more informal procedures may be adopted by school authorities who make the disciplinary determination. *Tate* v. *Board of Education of Jonesboro Arkansas*, 453 F.2d *supra* at 979; Farrell v. Joel, 437 F. 2d *supra* at 163; *DeJesus* v. *Penberthy*, 344 F.Supp *supra* at 74; *Jackson* v. *Hepinstall*, 328 F.Supp. *supra* at 1106; *Rumler v. Board of School Trustees for Lexington County*, 327 F. Supp. *supra* at 744; *Schwartz* v. *Schuker*, 298 F.Supp. 239 (E.D. N.Y. 1969).

All courts which have considered the problem have recognized the authority of school administrators to suspend students for a short period without a hearing if an emergency situation requires the removal of the disruptive student from the school to restore an academic atmosphere. *Williams* v. *Dade County School Board*, 441 F.2d *supra* at 301; *Sullivan* v. *Houston Independent School District*, 333 F.Supp. *supra* at 1172; *Gardenhire* v. *Chalmers*, 326 F.Supp. *supra* at 1205; *Banks* v. *Board of Public Instruction of Dade County*, 314 F.Supp. *supra* at 291-292; *Hobson* v. *Bailey*, 309 F.Supp. *supra* at 1400; *Buck* v. *Carter*, 308 F.Supp. 1246, 1249-1250 (W.D. Wisc. 1970); *Stricklin* v. *Regents of the University of Wisconsin*, 297 F.Supp. *supra* at 420.

Due process is not a straitjacket imposed by the Courts upon educators. The minimum requirements of notice and a hearing prior to suspension, except in emergency situations, does not require inflexible procedures. Court must be mindful not to require educators to follow specific or particular procedural frameworks. Due process is satisfied if the procedures are "reasonably calculated to be fair to the student and lead to a reliable determination of the factual issues involved." *Gardenhire* v. *Chalmers*, 326 F.Supp. *supra* at 1202-1203. As the

District Court stated in *DeJesus* v. *Penberthy*, 344 F.Supp. *supra* at 74:

> School authorities must be given discretion within wise limits to find facts and assess their significance. Their knowledge of the context within which discipline problems arise entitles their judgment to be accorded great weight. On the other hand, there is less reason to accord such authorities as much discretion in fashioning procedures. However flexible the contours of due process may be in the ascertainment of the outer limits is a judicial function under the Fourteenth Amendment. Of course, school authorities must have some discretion in developing fair procedures. Hopefully, they will not assume that the minimum requirements of the due process clause as determined by the courts are all that they, as school administrators, should determine to accord students as a matter of sound educational policy.

The Fourteenth Amendment due process requirement of notice in a hearing are "nothing more than fair play." *Banks* v. *Board of Public Instruction of Dade County*, 314 F. Supp. *supra* at 291. If school administrators follow procedures which result in a fair factual determination made after notice and an opportunity to defend against the charges of misconduct, then no matter how informal the procedure, the student has been accorded the minimum requirements of the due process clause of the Fourteenth Amendment of the Constitution of the United States.

The decisions which have dealt with the subject in the composite provide that a minimum procedural fairness requires:

1. Immediate removal of a student whose conduct disrupts the academic atmosphere of the school, endangers fellow students, teachers or school officials, or damages property.

2. Immediate written notice to the student and parents of the reason(s) for the removal from school and the proposed suspension should be given within 24 hours.
3. Not later than 72 hours after the actual removal of the student from school, the student and his parents must be given an opportunity to be present at a hearing before a school administrator who will determine if a suspension should be imposed.

   Such hearing, which is not a judicial proceeding, must provide at a minimum

   (a) Statements in support of the charge(s) against the student upon which the hearing is conducted.

   (b) Statements by the student and others in defense of the charge(s) and/or in mitigations or explanation of his conduct.

   (c) The administrator is not required to permit the presence of counsel or follow any prescribed judical rules in conducting the hearing.

   (d) The administrator should, within 24 hours advise the student and his parents by letter of his decision and the reasons therefor.

School administrators are free to adopt regulations providing for fair suspension procedures which are consonant with the educational goals of their schools and reflective of the characteristics of their school and locality. There is no one way to insure fairness in the suspension process. The choice of the best procedure for a particular school system should be left to the school officials charged with the administration of that school system.

In the present case plaintiffs were not accorded a hearing. The conference required by school regulations following suspension was not a fact-finding hearing, but

rehabilitative in nature. None of the named plaintiffs were in fact afforded even this conference. There is no evidence in the record that any of the plaintiffs voluntarily relinquished their right to a hearing.

The Court HOLDS that plaintiffs were not accorded due process of law, in that they were suspended without hearing prior to suspension or within a reasonable time thereafter.[17]

The Court ORDERS that references to the suspensions of plaintiffs or members of their class be removed from all records of the Columbus Public Schools.

VAGUENESS AND OVERBREADTH

Plaintiffs contend that the disciplinary regulations under which they were suspended are void because they are unconstitutionally vague and overbroad. *See, e.g., Baggett* v. *Bullit*, 377 U.S. 360, 367-378 (1964); *Champlinsky* v. *New Hampshire*, 315 U.S. 568, 573 (1942); *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453 (1939); *Grayned* v. *City of Rockford*, 408 U.S. 104, 114-115 (1972); *Zwickler* v. *Koota*, 389 U.S. 241, 249-250 (1967).

The concepts of vagueness and overbreadth are safeguards against governmental intrusion upon First Amendment rights. *See, Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 168 (1973). Plaintiffs have failed to prove that their conduct at the time of their suspensions was entitled to First Amendment protection. On the contrary, the evidence establishes that the various school administrators acted to restore order and discipline in their schools. In such circumstances, the action of school

[17]This holding does not reflect upon the wisdom or propriety of the suspensions themselves. Phillip Fulton's testimony fully supports the suspensions he imposed. However, the Court does not review the appropriateness of the suspension. The limited issue is whether the procedure employed met the minimum standards of due process. The Court holds that it did not.

administrators do not contravene the First Amendment. *See, Norton v. Discipline Committee of East Tennessee State University,* 419 F.2d *supra* at 200; *Esteban* v. *Central Missouri State College,* 415 F.2d *supra* at 1088; *Banks* v. *Board of Public Instruction,* 314 F.Supp. *supra* at 290; *Jones* v. *State Board of Education,* 279 F.Supp. *supra* at 202.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

Civil Action No. 71-67

Eileen Lopez, et al.,

Plaintiffs,

vs.

Herbert M. Williams, et al.,

Defendants

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby granted that Norval Goss, James Furgason, James Boster, John Mulherin, John Ellis, The Columbus Board of Education, Virginia Prentice, Thomas Moyer, Marilyn Redden, Paul Langdon, David Hamlar, Marie Castleman and Watson Walker, defendants named in the above case, hereby appeal to the Supreme Court of the United States from the final judgment, declaring Section 3313.66 of the Ohio Revised Code unconstitutional entered in this action on September 17, 1973.

This appeal is taken pursuant to 28 U.S.C. §1253.

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PROOF OF SERVICE

I, Thomas A. Bustin, one of the attorneys for appellants, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ——

day of ————, 1973, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on plaintiffs by mailing a copy thereof, postage prepaid, to:

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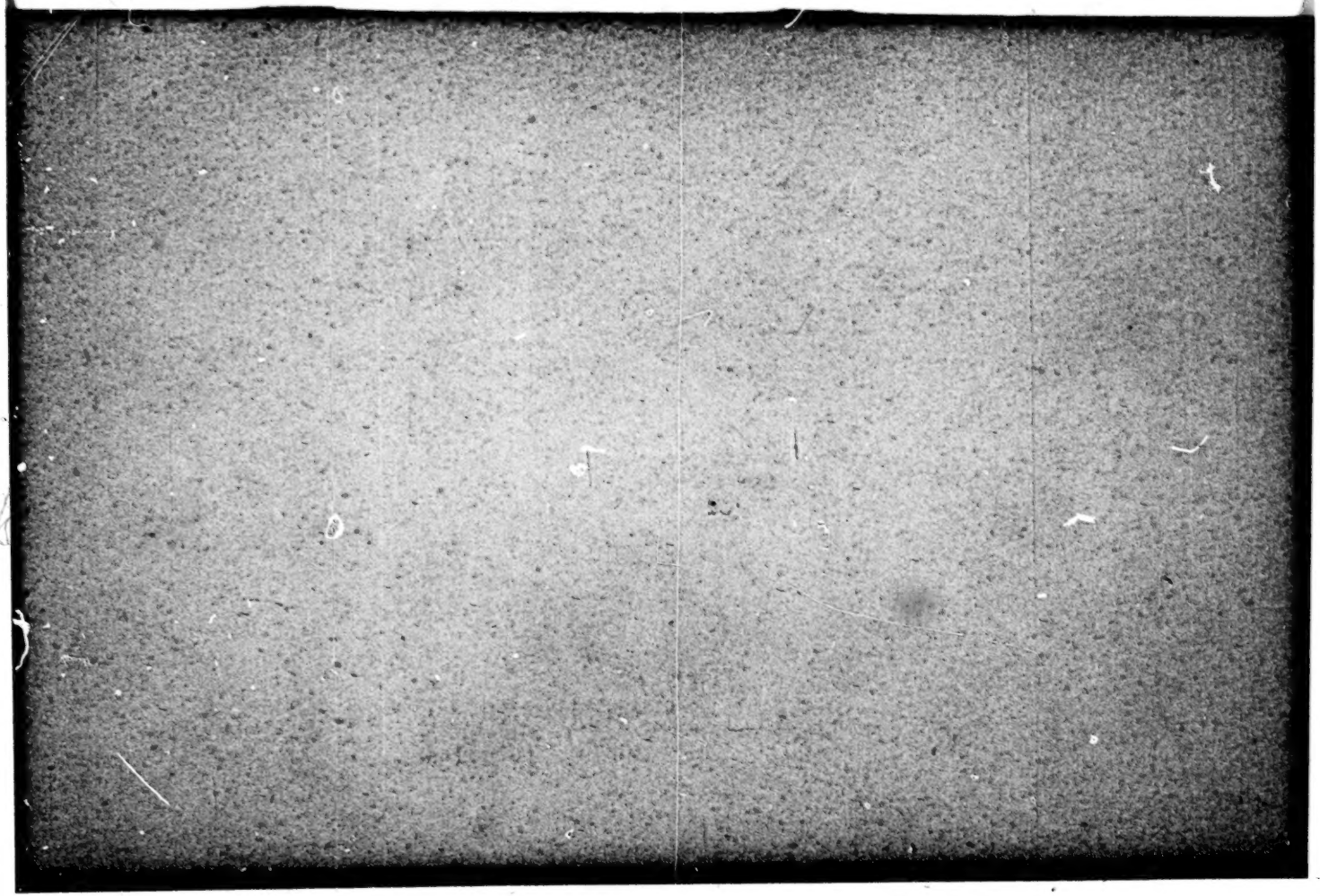

SUPREME COURT, U. S.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-898

NORVAL GOSS, ET AL.,
APPELLANTS,
v.
EILEEN LOPEZ, ETC., ET AL.,
APPELLEES.

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

Appellees' Motion To Affirm The Judgment of The District Court

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In the
Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, ET AL.,
APPELLANTS,

v.

EILEEN LOPEZ, ETC., ET AL.,
APPELLEES.

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

Appellees' Motion To Affirm The Judgment of The District Court

The Appellees in the above entitled case hereby move to affirm on the ground that the questions presented are so insubstantial as to not need further argument.

Opinion Below

The District Court's opinion has yet to be reported. The Appellees therefore attach to this motion a copy of the order and accompanying opinion and designate it Appendix A.

Statute Involved

The Statute challenged by this action, and held by the Court below to violate the Due Process Rights of suspended students, is Section 3313.66 of the Ohio Revised Code. It states:

> § 3313.66 Suspension or expulsion.
> The superintendent of schools of a city or exempt village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall within twenty-four hours after the time of expulsion or suspension notify the parent or guardian of the child, and the clerk of the board of education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent or guardian or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester.

Statement of the Case

During the spring of 1971, the Columbus, Ohio, City School System found itself in the throes of racial tension. This tension resulted in sporadic problems of various sorts. The response of several school principals was to engage in the wholesale suspension of students.[1] These suspensions were neither preceded *nor* followed by *any* form of hearing or conference designed to determine their propriety.[2] Given the wholesale nature of these suspensions it was inevitable that many children had their education terminated by the mistake of school officials. Several of the named Plaintiffs so testified.[3]

In response to this situation the Appellees filed suit alleging that these suspensions violated the Procedural Due Process requirements of the Fourteenth Amendment to the United States Constitution. More specifically it was alleged that 42 U.S.C. 1983 was violated. Nine named Plaintiffs sued on behalf of a class of Columbus school students who had been suspended in a like manner. Section 3313.66 was challenged directly because it was manifest that in the absence of the statute no authority existed to exclude children from school,[4] that the statute specifically

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[1] Although the Appellees never were certain of the exact number of children suspended, one indication is given by the testimony of Dwight Lopez referred to in the Court's opinion (Appendix, p. 20). Lopez testified that he personally knew more than seventy-five students suspended from one school on one given day.

[2] See Appendix A, pages "26-39" some students did have subsequent conferences (usually ten (10) days or more after the termination of schooling) which were held not to elicit the truth but to determine future goals and placement. (Appendix A, pp. 23-24).

[3] See Appendix A, pp. 26-39.

[4] See e.g., § 3313.64 of the Ohio Revised Code which mandates a free education for each child between the ages of 6 and 21 and § 3321.01 which prescribes compulsory education. See also the District Court's discussion (Appendix A, p. 52, n.14).

permitted suspensions without any hearing and expulsions without any prior hearings, and that in fact, the statute was relied upon by the Columbus school officials.[5] The Plaintiffs below sought a declaration of the section's unconstitutionality, an injunction against its enforcement, and expungement of any reference to the suspensions contained in school files.

The Court, after trial, declared section 3313.66 and Columbus Regulations in effect at the time of the suspensions unconstitutional on the grounds that they failed to provide for a hearing prior to suspension. The Court further ordered expungement as requested. It is this decision which is presently being appealed.

Issue Presented

Was the Court below incorrect when it held that the exclusion of Ohio students from school for up to ten (10) days without *any* form of fact-finding hearing or conference was a violation of the Due Process guarantees of the Fourteenth Amendment to the United States Constitution?

Argument

Several matters should be noted at the outset with respect to the District Court's holding. First, contrary to assertions by Appellants the District Court did not rule that a three (3) day suspension is constitutionally permissible while a ten (10) day suspension (without a prior hearing) is unconstitutional. The Court did rule rather that a prior hearing is always required except when there are extraordinary circumstances. When extraordinary circumstances exist, a student may be suspended without a

[5] See, e.g., § 1010.04 of the Administrative Guide to the Columbus Public Schools set out in the Court's opinion (Appendix A, p. 21).

prior hearing but must be given a subsequent hearing within three days of the exclusion.[6] This holding and this perspective merely places school suspensions into the mainstream of this Court's Due Process decisions, as will be discussed, below.

Secondly, the District Court's discussion of the procedures necessary to meet Due Process provides the school district with maximum flexibility. Although the issue below was whether *any* hearing was required rather than what form a hearing should take, the Court indicated its belief (in dicta) that procedures could be informal so long as an inquiry into the correctness of the suspension was made.[7]

It should further be noted that, contrary to assertions in Appellants' Jurisdictional Statement, the District Court did fully recognize that a long term expulsion might require more stringent protections.[8] However, as the Court correctly held, this should not disturb the root requirement of a hearing of some form prior to a suspension.

A. The Court Below Correctly Characterized Education As An Interest Protected By The Due Process Clause Of The Constitution.

The Appellants' primary argument in their Jurisdictional Statement is that this Court's opinion in *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2 16 (1973) is in conflict with the District Court's holding that the right to education is an interest protected by the Due Process Clause. This argument fails to appreciate the issues which this Court grappled with in *Rodriguez*.

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[6] Appendix A, p. 60.
[7] See discussion, Appendix A, p. 61.
[8] See discussion, Appendix A, p. 58.

The lower Court understood that this Court was concerned with articulating an equal protection standard in *Rodriguez*. The ultimate finding that education was not a "fundamental interest" merely precluded strict scrutiny under relevant equal protection precedent e.g. *Dunn* v. *Blumstein*, 405 U.S. 330, 92 S.Ct. 995 (1972); *Eisenstadt* v. *Baird*, 405 U.S. 438, 92 S.Ct. 1029 (1972). As the Court below correctly ruled, a finding of fundamentality or non-fundamentality had little if anything to do with the question of what interests are protected by the Due Process Clause of the Constitution. One need only examine the interests which this Court has held require protection prior to state interference to realize that "fundamentality" is not required to invoke due process protection, e.g. *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S.Ct. 1011 (1970) (deprivation of welfare benefits); *Bell* v. *Burson*, 402 U.S. 535 91 S.Ct. 1586 (1971) (suspension of drivers license); *Wisconsin* v. *Constantineau*, 400 U.S. 433, 91 S.Ct. 507 (1971) (loss of reputation). As this Court's decision in *Board of Regents of State College* v. *Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972) makes clear the search is for a "protected interest" as opposed to a "fundamental interest," 408 U S. 569-570, 92 S.Ct. at 2705; this in turn requires a finding that the interest involved is either a liberty or property interest within the meaning of the Fourteenth Amendment.

The Court below, in primary reliance upon *Meyer* v. *Nebraska*, 262 U.S. 390, 43 S.Ct. 625 (1923), ruled that educational interests come within the concept of liberty; as this Court stated in *Meyer:*

> While this court has not attempted to define with exactness the liberty this guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt,

> it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, *to acquire useful knowledge*, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. 262 U.S. at 399 (emphasis added).

This Court's frequent recitation of this passage from *Meyer* underscores its continuing vitality. See, e.g., *Roth*, supra 408 U.S. at 572. Moreover this Court in *Bolling* v. *Sharpe*, 347 U.S. 497, 499, 74 S.Ct. 693, 694 (1954), expressly held again that education was a liberty subject to due process protections. See also *Goldberg* v. *Kelly*, 397 U.S. 254, 262, n.9, 90 S.Ct. 1011, 1017 n.9 (1970) citing approvingly a similar holding in *Dixon* v. *Alabama State Board of Education*, 294 F2 150 (5th Cir. 1961) in the school expulsion context. It is thus manifest that the District Court was merely following this Court's well established precedent in holding education to be a "liberty" subject to due process protection. It is correct, as the District Court stated, that:

> No court faced with the question has held the right to an education is not within the concept of liberty (Appendix, p. 55.)

Additionally, it seems clear under the tests enunciated in *Roth*, *supra*, that a student in Ohio has a "property" right to education as well.[9] As this Court stated in *Roth*, *supra* at 577

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[9] Contrary to Appellants' assertions the trial Court did not reject this view. Rather, it merely stated in a footnote that education is not a traditional property. The Court went on to note that "However, governmental entitlements in our modern society often take on the incidents of property". Appendix, p. 54.

> Property interests, are created and their dimensions are defined by existing rules or understanding that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

In Ohio, as the District Court noted, there is a clear statutory right to an education. Section 3313.64 of the Ohio Revised Code provides that each child between the ages of six (6) and twenty-one (21) is entitled to a free education. § 3321.01 compels attendance through age 16. An elaborate statutory scheme is established to deliver educational services to the children of Ohio (Title 33 Ohio Revised Statutes). It is obvious that the statutory entitlement to education in Ohio is at least as strong as the entitlement to welfare ruled upon in *Goldberg, supra*, and referred to in *Roth, supra* in describing what constitutes "property."

Thus whether one characterizes education as "liberty" as the lower Court did, or as "property" it is clear that education in Ohio is a protected interest. Under this Court's holdings, followed by the District Court, the State cannot deprive a citizen of a protected interest without Due Process of law. Yet this is precisely what was done to the Appellees in the instant case and what the District Court's ruling redresses. Such is clearly correct, perfectly consistent with *Rodriguez*, and requires no reconsideration by this high Court.

B. A Deprivation Of A Protected Interest, Such As Education, Must Be Preceded By A Hearing, Absent Extraordinary Circumstances.

It is instructive to remember just what the trial Court held with respect to a required hearing; as this Court's

cases are discussed it will become evident that the lower Court's decision is in the mainstream of this Court's pronouncements.

The District Court ruled that:

> Formality and procedural requisite of a hearing vary with the relative importance of interests involved and the nature of the subsequent proceedings; *Boddie* at 378. But the constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest, of course, does not depend on such a narrow balancing process. (Appendix, p. 56).

This Court has been absolutely consistent in requiring a hearing prior to an invasion of a protected interest. As this Court stated in *Roth, supra*,

> when protected interests are implicated, the right to some kind of prior hearing is paramount (footnote omitted) 408 U.S. at 569-570.

In *Boddie* v. *Connecticut*, 401 U.S. 371, 379, 91 S.Ct. 780, 786 (1971) this Court characterized a prior hearing as a "root requirement" of Due Process.

In *Bell* v. *Burson*, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591 (1971), this Court, in requiring a hearing prior to the suspension of a drivers license, stated:

> While "(M)any controversies have raged about . . . the Due Process Cuase" *ibid.*, it is fundamental that except in emergency situations (and this is not one) due process requires that when a state seeks to terminate an interest such as that here involved, it must afford "Notice and opportunity for hearing appro-

> priate to the nature of the case" *before* the termination becomes effective. Ibid. *Opp Cotton Mills* v. *Administrator*, 312 U.S. at 152-156, 61 S.Ct. at 536-538 (footnote omitted.)

See also such diverse cases as *Mullane* v. *Central Hanover Bank and Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 656 (1950) "The Due Process Clause — at a minimum — require(s) — adjudication be precedent by notice and opportunity for hearing"; *Armstrong* v. *Manzo*, 380 U.S. 545, 550, 85 S.Ct. 1187, 1190 (1965); and *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S.Ct. 1011 (1970).

Thus this Court's consistent position has thus been that a hearing of some kind prior to an invasion of a protected interest is required unless "extraordinary circumstances" require summary action.

The District Court in this case was properly aware of the extraordinary circumstance doctrine[10] and properly carved out an exception to the prior hearing requirement in accordance with the realities and needs of school discipline. The District Court stated that:

> "All courts which have considered the problem have recognized the authority of school administrators to suspend students for a short period without a hearing if an emergency situation requires the removal of the disruptive student from the school to restore an academic atmosphere."[11]

The Court then provided that school officials could cause the "immediate removal of a student whose conduct

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[10] See, e.g., *Central Union Trust Co.* v. *Garvan*, 254 U.S. 554, 41 S.Ct. 214 (1921); *Phillips* v. *Commissioner of IRS*, 283 U.S. 589, 51 S.Ct. 608 (1931); *Ewing* v. *Mytinger & Casselberry Inc.*, 339 U.S. 594, 70 S.Ct. 870 (1950).

[11] Appendix, p. 59.

disrupts the academic atmosphere of the school, endangers fellow students, teachers or school officials or damages property." [12] However, an informal fact-finding hearing must follow within 72 hours.

Thus the District Court's ruling on this central point of law is once again consistent with this Court's rulings.

C. Contrary To Appellants' Contention, This Court Has Never Required Invasion Of A Protected Interest To Be Coupled With "Grievous Loss" In Order For Due Process To Attach.

The Appellants advance the argument that the invasion of a protected interest does not require prior procedural safeguards unless "grievous loss" is suffered. In advancing this argument the Appellants (a) contradict several recent holdings of this Court, (b) make an argument that would propel this and other courts into the impossibly subjective determination of what constitutes a "grievous loss," (c) cite cases which really do not stand for the proposition advanced, (d) ignore this Court's holding that the weighing process between extent of loss and inconvenience to the State properly goes to the *form* of the hearing and not to its existence, and, (e) ignore the express findings made by the Court below on unrefuted evidence that a school suspension, irrespective of length, has the possibility of causing substantial harm.

In *Fuentes* v. *Shevin*, 407 U.S. 67, 92 S.Ct. 1983 (1972) this Court, in an observation which has special poignancy in the immediate case, stated:

> The Fourteenth Amendment draws no bright lines around three-day, 10-day or 50-day deprivations of

[12] Appendix, p. 60.

> property. Any significant taking of property by the State is within the purview of the Due Process Clause. While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing of some kind. 407 U.S. at 86.

This language is virtually identical to that which the District Court used to strike down the Ohio statute which permitted a suspension of education for up to ten days without a hearing. As the District Court stated:

> It is important to remember that even though the interference with the liberty of a right to education is limited, the student's right to be treated with procedural fairness prior to a deprivation of the right to an education is not lost. The magnitude of the deprivation affects the formality and comprehensiveness of the due process safeguards: it does not affect the basic fact that these safeguards shield the student from arbitrary or capricious interference with his right to education. (Appendix, p. 55.)

This Court in *Fuentes* rejected the argument that the holdings in *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820 (1969) or *Goldberg, supra*, (or, of course, other cases) were predicated on a finding of "grievous loss." As this Court stated at 407 U.S. 67 at 88●

> Both decisions were in the mainstream of past cases, having little or nothing to do with the absolute "necessities" of life but establishing that due process requires an opportunity for a hearing before a deprivation of property takes effect.

In *Roth, supra*, despite the exhaustiveness of the opinion, no reference is made to the concept of "grievous loss." Very understandably this Court has rejected such a concept as a general principal in the determination of whether a prior hearing is required (as opposed to a determination of the elements of a prior hearing).

The Due Process standard urged by Appellants would inject an impossible subjectivity into Due Process law. This Court would be faced with determining on a case by case basis whether an interference with a given liberty or property was "grievous" or not. It would be virtually impossible to establish standards, and thus a state would have no ability to predict just what interference required a prior hearing and what did not. This Court's opinions in *Fuentes* and *Roth* avoid this result.

In seeking to counter this Court's general pronouncements on this subject, the Appellants have taken a one-sentence quotation from a concurring opinion by Justice Frankfurter concerning "grievous loss" and have attempted to make it an integral element of Due Process. Analysis of the three cases cited by the Appellants indicates that the phrase has been a rare tool used only sparingly by this Court in a few limited situations in which a violation of liberty was thought to be in doubt. There is no such doubt in the present case. It is unquestioned that a whole class of school children were completely excluded from their right to education for definite periods of time.

In *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 168, 71 S.Ct. 624, 646 (1951), Justice Frankfurter, in a concurring opinion, first used the grievous loss language. In that case, in the context used, the issue was whether the government's act was a significant violation of the liberty of an untainted reputation (Plaintiff organization accused of being Communist.). Given the necessarily subjective determination of "taint," grievous

loss became a useful tool to determine whether any liberty was invaded.

Likewise in *Hannah* v. *Larche*, 363 U.S. 420, 80 S.Ct. 1502 (1960), the second case cited by Appellants, the issue was whether the government's act was likely to taint the reputation of the Plaintiffs (accusation of racism). The same considerations involved in *Joint Anti-Fascist Refugee Committee*, *supra*, made the quotation a useful tool.

Although the final case cited by the Appellants did not involve reputation, it did involve the same unique issue of whether any meaningful liberty had in fact been invaded. This final case was *Morrissey* v. *Brewer*, 408 U.S. 471, 92 S.Ct. 2593 (1973). At the point in the decision at which the quotation appears this Court was concerned with whether a parolee could truly be said to have "liberty" since he was nominally in custody. There, this Court appeared to use the grievous loss tool to determine whether the State's revocation of parole effectively changed the life of one nominally in custody. Upon finding harm the Court was able to say:

> By whatever name, the liberty is valuable and must be seen within the protection of the Fourteenth Amendment. (92 S.Ct. at 2601)

In sum, the grievous loss quotation has been a unique tool to assist this Court in a limited number of cases in which there was doubt about the very existence of a violation of liberty. In the instant case, in which a flat exclusion from the right to education is a given, such a tool is manifestly unnecessary.

The District Court's decision properly weighed the extent of the harm against the governmental interest in de-

termining what the *form* of the hearing should be—rather than in determining whether a prior hearing was required. This Court has long held that the weighing process concerns the form of the hearing, not its existence. See, e.g. *Cafeteria & Restaurant Workers* v. *McElroy*, 367 U.S. 886, 81 S.Ct. 1743 (1961); *Boddie* v. *Connecticut*, 401 U.S. 371, 378, and *Roth*, *supra*, in which it was stated:

> And a weighing process has long been a part of any determination of the *form* of hearing required in particular situations by procedural due process. 408 U.S. at 570.

In a footnote to this quote, this Court made clear just when the weighing process takes effect. This Court stated:

> The constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest, of course, does not depend upon such a narrow balancing process. 408 U.S. at 570-71 N. 8.

It is clear that the District Court's approach meets this Court's requirements of weighing as they apply to the form of a hearing in a given situation.

Finally, if some minimum quantum of harm is required to invoke the procedural protections of Due Process, the record provides substantial unrefuted evidence of such. As the opinion of the District Court notes, Norval Goss, Director of Pupil Personnel of the Columbus Public Schools, testified that academic penalties accompany a suspension and that any absence may have negative educational effects. Several of the named Plaintiffs (and pre-

sumably other members of the class) had notations entered on their permanent records concerning the fact of suspension. Further, as the Court noted, several prominent Ohio psychologists testified concerning the real possibility of substantial harm to a suspended student. (Appendix, p. 40). The testimony indicated that some of these potential harms are more likely when a student has not been given an opportunity to avoid capricious and arbitrary action by some form of a prior hearing. This testimony, confirmed by the testimony of several other witnesses, including named Plaintiffs, added to the testimony of Norval Goss, certainly establishes a real and potentially substantial injury which can result from a suspension regardless of its length. Such evidence clearly meets any threshold requirement of injury.

The Appellants argue that this case is in conflict with other decisions, and that therefore plenary treatment should be accorded to it. Although it cannot be denied that there are some decisions which have ruled differently, the trend is toward requiring some form of informal fact-finding hearing prior to a suspension, absent an emergency situation. See, e.g., *Vail* v. *Board of Education of Portsmouth School District*, 354 F. Supp. 592 (D.N.H. 1973) and *Black Students of N.Ft. Meyers Jr.-Sr. High School* v. *Williams*, 335 F. Supp. 820 *aff'd. per curiam* 470 F2 957 (5th Cir. 1972). The *Black Students* decision overruled by implication *Banks* v. *Board of Public Instruction*, 314 F. Supp. 285, vacated, 401 U.S. 988 (1971), aff'd. per curiam, 450 F.2d 1103 (1971), a case heavily relied upon by the Appellants. It is submitted that this is a manifestation that the trend is toward requiring an informal hearing prior to a suspension absent an emergency. The present case, paying heed to this Court's pronouncements, merely fits within this trend.

Conclusion

The Court below struck down a statute and regulations which permitted students to be suspended from school without either a prior hearing or subsequent hearing. The Court below went out of its way to indicate that a hearing could be informal, so long as it was reasonably designed to elicit the truth. In so ruling the lower Court merely was applying this Court's ample precedent that a hearing must precede the deprivation of a liberty by the State. Full scale argument is surely not needed to confirm the correctness of this rather limited ruling. This Court should summarily affirm the decision below.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

Civil Action 71-67

EILEEN LOPEZ, et al.

PLAINTIFFS

v.

HERBERT M. WILLIAMS, et al.

DEFENDANTS

ORDER

For the reasons and on the grounds which more fully appear in the Opinion of this Court filed simultaneously herewith, it is concluded that plaintiffs were denied due process of law because they were suspended without adequate hearing. It is further concluded that the statute and regulation challenged are not unconstitutionally vague and overbroad.

The Court DECLARES that Section 3313.66, Ohio Revised Code and the regulations adopted by the Columbus Public Schools pursuant thereto which were in force at the time of plaintiffs' suspensions are unconstitutional, in that they provide for suspension from the Columbus Public Schools without first affording the student due process of law.

It is hereby ORDERED that the defendants delete all reference to the suspensions and disciplinary transfers of plaintiffs from the records of the Columbus Public Schools.

BY ORDER OF THE COURT
JOHN W. PECK
Judge, United States Court of
Appeals for the Sixth Circuit
JOSEPH P. KINNEARY
Chief Judge
United States District Court
CARL B. RUBIN
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action 71-67

EILEEN LOPEZ, et al.

PLAINTIFFS

v.

HERBERT M. WILLIAMS, et al.

DEFENDANTS

OPINION

Before John W. Peck, Judge, United States Court of Appeals for the Sixth Circuit; Joseph P. Kinneary, Chief Judge, United States District Court; and Carl B. Rubin, United States District Judge.

Kinneary, Chief Judge. This matter is before the Court on plaintiffs' motion for judgment on the pleadings under the provision of Rule 12(c) of the Federal Rules of Civil Procedure.

This is an action for injunctive and declaratory relief arising out of the suspension of the nine plaintiffs from Columbus Public School System in February and March, 1971.

A Three-Judge Court was convened under the provisions of Title 28, United States Code, Section 2281. *Calloway v. Briggs*, 443 F. 2d 296 (6th Cir. 1971).

The Court has jurisdiction under the provisions of Title 28, United States Code, §§1343(3), 2201 and 2202. Plaintiffs' claims for relief are alleged under the provisions of Title 42, United States Code, Section 1983.

Plaintiffs challenge the constitutionality of §3313.66 of the Ohio Revised Code and §1010.04 of the Administrative Guide of the Columbus Public Schools, and the Columbus Public School Policy Statement on Discipline. They allege two claims for relief. First, suspension without the minimal due process safeguards of notice and

prior hearing is violative of the Fourteenth Amendment to the Constitution of the United States because it denies students an education, an important public right, without due process of law. Second, the statute and regulation are unconstitutionally vague and overbroad because they provide no ascertainable standard for acceptable conduct.

Upon the consent of all parties and the other members of the panel, the factual issues in this case were tried before the Honorable Joseph P. Kinneary, Chief Judge, United States District Court for the Southern District of Ohio, *Sec. Rosado* v. *Wyman*, 397 U.S. 397, 403 (1970) who made the following findings of fact which are adopted fully by the Three-Judge District Court.

FINDINGS OF FACT

The plaintiffs presented evidence relating to the dismissals from school of Dwight Lopez, Betty Jane Crome, Susan Cooper, and Deborah Fox. In addition, Phillip Fulton, principal of Marion-Franklin High School during the 1970-1971 school year testified by deposition concerning the suspensions from Marion-Franklin High School of plaintiffs Tyrone Washington, Clarence Byars, Rudolph Sutton and Bruce Harris. There was no evidence presented to the Court concerning the suspension from the Columbus Public School System of the plaintiff Carl Smith.

Plaintiffs seek to maintain a class action. Phillip Fulton, principal of Marion-Franklin High School in February April, 1971, testified on deposition that on or about March 15, 1971 fourteen students were recommended for suspension from his school. Dwight Lopez, a student at Central High School testified that he personally knew more than 75 students who were suspended from Central High School on February 26, 1971. Doctor John Ellis, Superintendant of Columbus Public Schools, testified on deposition that the Department of Pupil Personnel keeps some records on suspensions, but he did not have them

available at the time of his deposition. No other evidence relating to the number of students suspended in February-April, 1971 was received by the Court.

Section 3313.66, Ohio Revised Code provides, in relevant part, that:

> . . . the principal of a public school may suspend a pupil from school for not more than 10 days. . . . Such . . . principal shall within 24 hours after the time of expulsion or suspension, notify the parent or guardian of the child, and the clerk of the Board of Education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the Board of Education at any meeting of the Board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the Board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The Board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester.

Section 1010.04 of the Administrative Guide to the Columbus Public Schools (January 2, 1973) provides that:

> Pupils may be suspended or expelled from school in accordance with the provision of §3313.66 of the Revised Code.

The parties introduced into evidence three memorandums from the Department of Pupil Personnel of the Columbus Public Schools on the subject of suspension of students from school. The earliest memorandum is dated August 16, 1971.[1] None of the memorandums were in effect

[1] The memorandums are dated August 16, 1971; February 21, 1973; and July 10, 1973. The memorandum of August 16, 1971

at the time plaintiffs were suspended from the Columbus Public Schools.

Phillip Fulton, principal of Marion-Franklin High School during the 1970-1971 academic year, testified that the following procedure was in effect at the time of the suspensions which are the basis of the present action:

> Basically, the assistant principals are the disciplinarians. They held the discipline responsibility in a given school. The majority of times, the incident does

---

provides, in relevant part, with regard to suspension that when a principal suspends a student he should:

"1. Notify him of the exact reason and the term of the suspension.
2. Notify the parent, by phone if possible, and explain the suspension.
3. Within 24 hours, write the parent a letter including the reason for the suspension.
4. Send a carbon copy of this letter to Pupil Personnel. On cases where you expect difficulty, or on cases which are not retained, be sure to include a brief summary of the incident along with any other information which may be of help.
5. Be ready and available for a conference if one is requested by the parent.

The length and term of suspension are left at the discretion of the principal. Be sure the students and parents know the exact date when the suspension ends."

The memorandum of February 21, 1973 provides, in relevant part, with regard to suspension that when a principal suspends a student he should:

"1. Notify him [the student] of the exact reason and term of the suspension.
2. Notify the parent, by phone if possible, and explain the suspension.
3. Within 24 hours, write the parent a letter including the reason for the suspension and the date the student is to return to school.
4. Send a carbon copy of this letter to pupil personnel. On cases where you expect difficulty, or on cases which are not routine, be sure to include a brief summary of the incident along with any other information which may be of help.

The length and term of a suspension are left at the discretion of the principal. Be sure the students and parents know the exact date when the suspension ends."

occur with an administrator. It occurs in a situation where a teacher refers it to administration. . . .

The teacher would send to the office in written form, it was to be written. We had a form that we followed indicating the incident, what had happened, and this was brought to the office at the time the student was brought to the office. The administrator then would go over the incident as written or as dictated by the teacher with the student. The student then would be given an opportunity, if the student didn't agree with the way it happened, then he would send back for the teacher and bring the teacher in who if we have some reason to see if there is a discrepancy. We then asked the teacher to interpret what he has written for us. If there is a large discrepancy where the student would deny it and the teacher would confirm it, then we would react upon this information according to what the teacher tells us. Then if it is deemed that there is a suspension, you follow the procedure that I have already formulated. You call the parent first and then send the student home. Again, if we can't find the parent, we keep the student until his normal school day is over. So they are retained until their school day is completed. The parent, if he can be contacted in the meantime, then would be informed of the situation. This would be followed by a letter stating again that we would discuss but including also the time of the appointment, if it has been prearranged. If not, the parent may get in tomorrow. They might say that they can get in tonight and maybe have time to see the administrator and that would be set up at that time. . . .

. . .

[At the conference] [t]he problem, the individual,

we talk about their school record. We get their entire school record. We talk about their academic problems, if they exist. We talk about their potential. We talk about their goals. It is a conference to remedy the problem and you try to find a solution so that the student is successful in his schooling. . . .

[It is not a conference to verify the facts supporting the suspension.] It is to communicate with the parent, as part of my responsibility, the problem that exists and ask for their help. We inform them and then find out what directions we can take that will eliminate the need for further problems.

On July 10, 1973, the Department of Pupil Personnel of the Columbus Public Schools forwarded to all principals a memorandum containing guidelines for the suspension of students. The memorandum contained the following guidelines:

A. Grounds for suspension.

1. Violation of any City of Columbus Ordinance or state or federal law; and
2. Violation of written school rules of Board of Education regulations; and
3. Activities which interfere with or threaten the orderly functioning of school activities including classrooms, extra-curricular and athletic activities; and
4. Any activity which is grounds for expulsion. This shall include, but not be limited to, assault on a teacher, arson, or destruction of school property, active leadership in school disruption and direct refusal to follow a direct order from an administrator in time of school tension.

B. Suspension procedures.

1. Whenever an incident occurs which may lead

to a suspension, the principal or assistant principal shall investigate the nature of the alleged offense before commencing suspension procedures. Unless the pupil is unavailable or unwilling to discuss the incident with the principal, this investigation shall include a discussion with the pupil so that the pupil may be given an opportunity to be heard with respect to the alleged offense.

2. If the principal determines that grounds for suspension do exist, he shall notify the pupil of the exact reason and length of the suspension and further inform the pupil that the suspension means he must stay off school property and away from school-sponsored activities during the entire term of the suspension.
3. Notify the parent or guardian of the suspension, by phone if possible, and explain the reason and length of the suspension. Except in cases of disruption where circumstances make it vital that one or several pupils be removed from the school property immediately because of a threat to the safety of other pupils, faculty or school property, no pupil shall be released from school during the school day without notifying the parent or guardian in person or by phone.
4. The parent or guardian shall be provided an opportunity to attend a conference with the principal, to review the reasons for the suspension.
5. Within 24 hours after the incident leading to suspension, a letter shall be written to the parents or guardian which shall include the reasons for and term of the suspension and that

a conference with the principal will be arranged, at mutual convenience, at the earliest possible time. A carbon copy of this letter, together with relevant information regarding the suspension, shall be sent to Pupil Personnel (designated agent of Clerk of Board of Education).

6. In the event that any suspension is subsequently found to be erroneous, all references to the suspension shall be expunged from the school records.
7. At the conclusion of a suspension, it is the responsibility of the principal to see that the pupil is informed that the suspension is terminated and he is eligible to return to school.

DWIGHT LOPEZ

In February, 1971, Dwight Lopez was 19 years of age and a student at Central High School, Columbus, Ohio. He was the only witness to give testimony regarding his suspension from Central High School. Defendants did not present any evidence regarding Dwight Lopez's suspension from Central High School, other than the letters sent by the Administration at Central High School to Dwight Lopez's parents regarding the suspension.

Dwight Lopez testified that in late February, 1971, there was tension at Central High School over Black History Week. On the morning of February 26, 1971, he had a free study period in the lunch room. While he was in the lunch room, black students came in and started overturning tables. Dwight Lopez testified that he and several of his friends walked out of the lunch room. He testified that he took no part in the unlawful activity, and that he did not violate any school rule or any other rule.

On the morning of February 26, 1971, school was suspended at Central High School. Dwight Lopez returned to his home. There he received a phone call from Mr. Calvin Parks, principal of Central High School, notifying him that he had been suspended. He was not advised of the reasons for the suspension.

Dwight Lopez's parents received the following letter dated February 26, 1971:

> Dear Mr. and Mrs. Lopez:
>
> We have had a continued [sic] problem in school for several days and today a group of students disrupted our complete school program.
>
> Dwight was in the group and we need to have a personal conference with you and Dwight to determine what the problem may be. Please keep him at home until a conference can be arranged. This will take some time. We will be communicating with you.
>
> Respectfully,
> CALVIN PARKS, *Principal*

On March 1, 1971, Mr. and Mrs. Lopez received the following letter:

> Dear Mr. and Mrs. Lopez:
>
> It will be necessary for you to appear at the Board of Education before Dwight returns to school. I have given your telephone number to Mr. Williams of the Pupil Personnel Office of the Board of Education. He will be in touch with you to set up an appointment.
>
> Dwight is to remain home during the hours school is in session.
>
> Yours truly,
> JAMES C. FURGASON

On March 5, 1971, Mr. and Mrs. Lopez were advised that a meeting had been set for March 8, 1971. Dwight Lopez testified that on March 8, 1971, he, his mother and a sister went to the Board of Education building but could not get in because the entrance was blocked by several hundred persons who were present at a rally protesting Board of Education policies. No further meeting was scheduled.

Dwight Lopez testified that his sister wrote a letter to Columbus Public School officials protesting his suspension.[2] He further testified that following March 8, 1971, his mother and his sister called the Office of Pupil Personnel but could not get past the secretary. On March 24, 1971, Dwight Lopez was transferred from Central High School to the Adult Day School. He did not request this transfer. Dwight Lopez testified that he did not attend the Adult Day School during the Spring of 1971. However,

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[2] Defendants offered into evidence Dwight Lopez's Columbus Public School's cumulative record folder. It contained the following letter, dated March 24, 1971 to Mrs. Eileen Lopez from Mr. H. M. Williams, Director of Pupil Personnel from Columbus Public Schools:

> Dear Mrs. Lopez:
>
> I have received a letter from your daughter, Mrs. Alana Robinson, pertaining to your son, Dwight. She was inquiring as to the status of Dwight and his returning to school in Columbus.
>
> As you no doubt recall, I had scheduled an appointment with you and Dwight on March 8, 1971 at 8:30 a.m. The purpose of this conference was to discuss various possibilities relating to Dwight's future educational plans.
>
> This appointment was not kept nor did I receive from you a request to set up another conference. Since Dwight is 19 years of age and is no longer of compulsory school age, I thought that possibly you had made other plans for Dwight.
>
> In regards to Dwight's placement in a Columbus school, permission is granted for him to enroll in Adult Day School, 272 S. Nelson Road, immediately. Waiver of fees is being recommended.
>
> Sincerely,
> H. M. WILLIAMS, DIRECTOR
> *Pupil Personnel*

he returned to the Columbus Adult Night School and received his diploma on June 10, 1972.

BETTY CROME

In March, 1971, Betty Crome was 13 years of age and a student at McGuffey Junior High School. She was the only witness to give testimony regarding her suspension from McGuffey Junior High School. The defendants presented no testimony regarding her suspension, other than a letter from the principal of McGuffey Junior High School to Miss Crome's parents. Betty testified that on March 3, 1971, she went to her first period class. When class was dismissed, there were disturbances in the hall. Students were breaking light bulbs and throwing glasses in the school cafeteria. She could not get to her second period class, therefore she went out into the playground with other students. The principal came out into the playground and told the students assembled there to go home.

Betty further testified that she went with other students to Linden McKinley High School which was on her way home, and it was her purpose to return to her home. However, she stopped with the other McGuffey Junior High School students at Linden McKinley High School. There she was arrested by Columbus Police officers and taken to the Juvenile Bureau of the Columbus Police Department. Police called her mother who came to get her. Prior to releasing her they discussed Betty's situation with her mother. No charges were brought by the police department.

On or about March 3, 1971, Betty's mother received the following letter:

> Dear Mrs. Adams:
>
> This is official notification that your son/daughter, Betty J. Crome, has been temporarily suspended from McGuffey Junior High. This suspension will

continue until March 8, 1971 at 10:45 at which time you are to accompany him/her to school for a conference. During this time he/she is to remain at home during school period.

Yours respectfully,
FRANK D. MASON, *Principal*

Betty further testified that neither she nor her parents were ever advised of the reasons for her suspension. Her mother never talked with the principal regarding the suspension. She was returned to McGuffey Junior High School on or about March 8, 1971. She was not given an opportunity to make up work that she missed during the period of her suspension. She is currently a student in the Columbus Public School system.

DEBORAH FOX

In March, 1971, Deborah Fox was 16 years of age and a tenth grade student at Marion-Franklin Senior High School. She testified that on March 10, 1971, there were disturbances at Marion-Franklin High School. During the noon hour, Mr. Kollmer, an assistant principal, came up to her in the cafeteria and told her that he wanted her to come to his office. Mr. Kollmer said that if she didn't go to his office, she could go home for 10 days. Miss Fox went to Mr. Kollmer's office after talking with her mother on the telephone. Mr. Kollmer then told her that she was suspended for 10 days. She testified that she did not do anything which violated any rule or regulation of the school.

Miss Fox further testified that she was not given an opportunity to explain her side of the story. There was no hearing in which the facts underlying her suspension was determined.

On March 19, 1971, she went with her father to Mr. Kollmer's office and she was advised that she was again

suspended for a period of 10 days. She stated no reason was given for the suspension.

Miss Fox further testified that following this second 10 day suspension, she was transferred from Marion-Franklin to South High School and completed the school year there. Her family then moved into the district of East High School and she was permitted to attend school there. Subsequently, she graduated from Central Night School in June, 1972.

Betty further testified that she was not given an opportunity to make up any of the work that she missed during her suspension. She believed that her grades went down following her suspension and transfer.

Phillip Fulton, principal of Marion-Franklin High School, gave testimony by deposition which is in conflict with the testimony given by Deborah Fox. This principal testified that on Wednesday, March 10, 1971, at approximately 9:00 a.m., students were assigned either to a "club activity" or to a study hall. Four girls, including Deborah Fox, left their club "and had gone into the halls and created a disturbance". They refused to obey a teacher's order to return to their club activity. Two assistant principals were unable to get the four girls to abide by school rules. Mr. Fulton then arrived, and told the girls to report to their assigned class. Mr. Fulton did not suspend any of the students. They apparently complied with his order to return to class.

Mr. Fulton testified that during the confornta tion in the hallway Miss Fox was "very loud and disrespectful." She shouted at Mr. Kollmer, an assistant principal, "I hate you." During the noon hour Mr. Kollmer confronted Miss Fox in the school cafeteria. She was "still making negative comments." Mr. Fulton testified that she again told Mr. Kollmer "I hate you." Mr. Kollmer told her to report to the administration office. Miss Fox refused.

Mr. Kollmer then contacted her mother and requested that she come to the school to pick her up. Mr. Kollmer talked with plaintiff's mother prior to imposing the suspension. Mr. Fulton acquired his information regarding Miss Fox's conduct in part as a result of reports made to him by Mr. Kollmer. He also personally observed and heard Miss Fox's disruptive activity in the administration offices. Mr. Fulton testified that she was making rude and derogatory remarks to both of his assistant principals, Mr. Kollmer and Mr. Gill.

On March 10, 1971, Mr. Kollmer wrote the following letter to Miss Fox's parents:

> Dear Parents:
>
> I have suspended Deborah from Marion-Franklin High School until Friday, March 19.
>
> Deborah was extremely defiant and disrespectful with the assistant principal today.
>
> During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.
>
> Sincerely,
>
> RICHARD KOLLMER,
>
> *Assistant Principal*

Mr. Fulton testified that on March 19, 1971, Miss Fox "returned to school with her parents again and repeated the same kind of behavior that she had repeated earlier, again being disrespectful of Mr. Kollmer . . . and disrespectful in the office." On March 19, 1971, Mr. Kollmer sent the following letter to Miss Fox's parents:

> Dear Parents:
>
> I have suspended Deborah Fox from Marion-Franklin High School until Monday, March 29, or until contacted by Mr. Robert Carter or his repre-

sentative regarding your daughter's school placement.

During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,
RICHARD KOLLMER,
Assistant Principal

Mr. Fulton testified that he and his staff exhausted all avenues open to them with regard to Miss Fox's school behavior. He testified that she was a bright student but did not apply herself because she had a peer group position of leadership which identified her in the role of militant. Mr. Fulton believed that the transfer and consequent change of environment would result in better academic achievement for Miss Fox. Miss Fox's cumulative record folder contains the following entry under a category denominated "Additional Test Results — Comments": "3-15-71 Suspended for student disruption".

SUSAN COOPER

Susan Cooper testified that in March, 1971 she was an eleventh grade student of Marion-Franklin High School. On Monday, March 15, 1971, there was racial tension at Marion-Franklin High School. She wanted to go home, but was unwilling to leave without an excuse. She went to the school attendance office in an attempt to be excused. She talked with Mr. Richard Kollmer, assistant principal, who told her that she had to go to class. She told Mr. Kollmer that her mother had told her to go home if there were continuing tensions in the school. Mr. Kollmer told her "Well, you are suspended anyway."

Susan further testified that she met her mother on

her way home. She and her mother returned to the school. They waited to talk with Mr. Kollmer but he was unavailable. Mr. Gill, another assistant principal, told them to go home for 10 days, and that when she came back they could have a conference. She was not given an opportunity to tell her side of the story.

Mr. Gill sent Mrs. Cooper the following letter dated March 16, 1971:

> Dear Mrs. Cooper:
>
> I have suspended Susan, your daughter, from Marion-Franklin High School until Thursday, March 25. I will reserve 11:00 a.m. on this day for a conference with you and your daughter.
>
> Susan was involved in the disturbance at school on Monday, March 15, at which time she showed a lack of respect for the principal.
>
> During the suspension period, your daughter is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.
>
> Sincerely,
>
> OSCAR R. GILL,
>
> *Assistant Principal*

Susan further testified that following the 10 day suspension, she returned to Marion-Franklin High School with her mother, at which time they had a conference with the principal or an assistant principal. The facts leading up to the suspension were not discussed in any detail.

Susan Cooper was not permitted to make up any work she missed during the 10 day suspension. During the 1971-1972 school year Susan was elected homecoming queen of Marion-Franklin High School. She graduated in June, 1972.

Mr. Fulton, the principal at Marion-Franklin High

School, testified that on March 15, 1971, he ordered Miss Cooper to go to class, but that she refused. Mr. Fulton further testified that she was insolent and encouraged other students not to obey his order to go to class.

OTHER STUDENTS

The named plaintiffs, Tyrone Washington, Clarence Byars, Rudolph Sutton, Bruce Harris and Carl Smith did not testify at the hearing before the single-Judge District Court. No evidence was offered in their behalf.

Mr. Fulton, the principal of Marion-Franklin High School gave deposition testimony regarding the suspensions of Tyrone Washington, Clarence Byars, Rudolph Sutton, and Bruce Harris.

Mr. Fulton testified that on Monday, March 15, 1971, at approximately 9:00 a.m., there were disturbances in the eight to ten homerooms which were held in the school auditorium. When the disrupting students were notified that if they did not return to their homerooms, they would be suspended, they voluntarily went to their homerooms.

When the class bell rang for the first morning period, a group of black students entered the auditorium and refused to leave. The auditorium was scheduled to be used as a classroom during the first period. The group of students three times refused to obey an order to leave. One of the students, Tyrone Washington, told Principal Fulton that they (the students) were tired of listening to him and that now it was his turn to listen to them. Tyrone Washington further told Principal Fulton that they (the students) were going to tell him what was to be done. The principal suspended Tyrone Washington for disrupting the educational program. Washington wes removed from the auditorium by two plain-clothed policemen.

Oscar Gill, an assistant principal at Marion-Franklin

High School, sent a letter dated March 16, 1971 to the parents of Tyrone Washington:

Dear Parents:

I have suspended Tyrone, your son, from Marion-Franklin High School until Thursday, March 25. The Pupil Personnel Department of the Columbus Board of Education will notify you concerning a disposition of this case.

Tyrone was involved in a disturbance at school on Monday, March 15. He defiantly refused to follow the directions of the principal. Furthermore, he created an explosive situation.

During his suspension, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.

Sincerely,
Oscar R. Gill
Assistant Principal

School records indicate that Tyrone Washington was graduated from Marion-Franklin High School on June 6, 1971. The school records contain the following information under the heading "Additional Test Results — Comments": "3-15-71 Suspended for school disruption".

Mr. Fulton further testified that while Tyrone Washington was being removed from the auditorium Rudolph Sutton attacked a police officer. Sutton was then suspended from school. On March 16, 1971, Mr. Gill, an assistant principal, had a conference with Rudolph Sutton, his parents and his sister. Another conference was held on March 25, 1971 with Rudolph Sutton and his family.

On March 23, 1971, Rudolph Sutton was transferred from Marion-Franklin High School to South High School. He was graduated from South High School on June 6,

1971. Under the heading "Additional Test Results — Comments" the following entry appears on his school records: "3-18-71 Suspended for school disruption".

Mr. Fulton testified that Clarence Byars was in the halls of Marion-Franklin High School on March 15, 1971 and refused an order to go to class. Further, Mr. Fulton testified that Clarence Byars encouraged other students to refuse to go to class. Mr. Fulton then called Clarence Byars' mother and conferred with her on the telephone. Clarence Byars was suspended from school on March 15, 1971.

Richard Kollmer, assistant principal at Marion-Franklin High School, wrote the following letter to Clarence Byars' parents dated March 15, 1971:

> Dear Parents:
>
> I have suspended Clarence from Marion-Franklin High School until Thursday, March 18. I will reserve 9:00 a.m. on this day for a conference with you and your son.
>
> Clarence refused to go to class as directed, was disrespectful with the principal, and was inciting a school disruption.
>
> During the suspension period, your son is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at school.
>
> Sincerely,
>
> RICHARD KOLLMER,
>
> *Assistant Principal*

Columbus Public School records indicate that Clarence Byars was graduated from Marion-Franklin High School on June 11, 1972. Clarence Byars' school file also contains a copy of the March 15, 1971 letter from Assistant

Principal Richard Kollmer, notifying his parents of his suspension from high school.

Mr. Fulton testified that on March 23, 1971, during the course of an assembly in the Marion-Franklin High School auditorium Bruce Harris and several other black students stood up, turned their backs to the assembly speaker, and gave the "Black Pledge". Bruce Harris was suspended for disrupting the assembly program.

Mr. Fulton testified that he attempted to contact Bruce Harris' brother, who acted as his guardian, but was unable to do so. Bruce Harris did not return to school on March 30, 1971 when his suspension was terminated. The following letter was sent by Assistant Principal Oscar R. Gill dated March 23, 1971 to Bruce Harris' brother:

> Dear Mr. and Mrs. Robinson:
>
> I have suspended Bruce, your brother, from Marion-Franklin High School until Tuesday, March 30.
>
> During the suspension the Pupil Personnel Department of the Columbus Board of Education will review with you the contents of the letter of November 6, 1970.
>
> Bruce disrupted the assembly and walked out of the assembly during this morning. This he did after the principal made clear that if a student did, he would be suspended.
>
> During the suspension period, your brother is to remain at home during school hours, and not attend Marion-Franklin athletic events or other school sponsored activities during the day or evening. If there are any questions, please phone me at home.
>
> Sincerely,
> OSCAR R. GILL,
> *Assistant Principal*

Records of the Columbus Public School system indicate that Bruce Harris graduated from the evening high school on June 14, 1972. There is no indication in his official school records that he was suspended from Marion-Franklin High School.

There was no testimony regarding Carl Smith's suspension from the Columbus Public Schools. Carl Smith's Columbus Public Schoool's file indicates that he was graduated from Columbus Evening High School on June 14, 1972. There is no indication in the school records submitted to the Court that plaintiff was suspended from high school in March of 1971. There is an indication that he was withdrawn from Central High School on March 31, 1971 because he was over-age.

In addition to the above facts found by the single-Judge United States District Court and adopted by the Three-Judge United States District Court, the parties entered into a stipulation of fact filed with the Court on October 10, 1972. A copy of the stipulation of fact is attached as an appendix to the Court's finding of facts.[3]

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[3] On May 25, 1973, counsel for defendants filed a motion to withdraw the stipulation on the ground that the defendants were then informed that a hearing was going to be held on the factual issues and that plaintiffs should be put to the burden of proving the allegations contained in their complaint. The Court notes that the facts contained in the stipulation were all proven by the testimony and exhibits offered at the hearing before the single-Judge District Court. Basically, the stipulation itself was skeletal in nature. The facts conceded by defendants were those contained in letters from school administrators to suspended students and their parents and notations in students' official Columbus Public School records. There is no indication in the memorandum in support of the motion to strike the stipulation that any matters contained in the stipulation were untrue. Thus, the facts in the stipulation would be subject to a request for admissions under Rule 36(a), Fed. R. Civ. P. Additionally, the Court notes that defendants in their answer admitted almost every fact contained in the stipulation. All of paragraphs 5, 7, 8, 9, 10 and 13 of the stipulation are admitted. Paragraph 1 is admitted, except for the seventh sentence thereof. Paragraph 2 was admitted, except for Betty J. Crome's age. Paragraph 3 was admitted, except

Norval Goss, present Director of Pupil Personnel of the Columbus Public Schools, compiled a chart of the named plaintiffs' cumulative academic record. He drew the conclusion that plaintiffs' suspensions had no effect on their academic achievement as reflected in their grade point averages.[4]

Mr. Goss testified that students receive zeros for work missed during a suspension. They are not accorded the opportunity to make up the work. Mr. Goss conceded that any absence from school may have negative educational effects.

Plaintiffs presented evidence that suspension from school results in psychological harm to the student. The effects of suspension are not uniform. Most suspended students respond in one or more of the following ways:

1. The suspension is a blow to the students' self-esteem.
2. The student feels powerless and helpless.
3. The student views school authorities and teachers with resentment, suspicion and fear.
4. The student learns withdrawals as a mode of problem solving.
5. The student has little perception of the reasons for the suspension. He does not know what offending acts he committed.
6. The student is stigmatized by his teachers and school administrators as a deviant. They expect the student to be a troublemaker in the future.

A student's suspension may also result in his family and neighbors branding him a troublemaker. Ultimately repeated suspension may result in academic failure.

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for the third and fifth sentences. Paragraphs 4, 6, 11, 12, 14 and 15 of the stipulation are not admitted by the answer. Upon consideration, and being fully advised, the Court HOLDS that the motion is without merit, and therefore it is DENIED.

Defendant's Exhibit B is attached to the findings of fact and made a part of this Opinion and Order as if fully written herein.

APPENDIX

	1967-68		1968-69		1969-70		1970-71		1971-72		1972-73		
	Credits Earned	Point Average	Credits Earned	Point Average	Credit Earned	Point Average	Credits Earned	Point Average	Credits Earned	Point Average	Credits Earned	Point Average	Final Point Average
Byars, Clarence			5.9	2.70	5.7	2.67	5.1	2.63	4.0	2.00			2.559
Cooper, Susan			4.7	1.98	5.7	1.91	5.1	1.80	2.5	2.20			1.933
Crome, Betty							(2.8)	.79	(2.2)	.71	4.2	1.00	
Fox, Deborah					4.7	2.04	5.7	1.91	5.0	1.36	1.5	3.66	2.087
Harris, Bruce	4.2	1.33	3.2	.76	2.6	.63	2.5	1.17	4.0	1.89			1.074
Lopez, Dwight	4.2	1.33	.2	.04	5.6	.85	3.0	1.66	4.0	2.11			1.037
Smith, Carl	4.7	1.19	1.0	.19	4.2	1.09	2.7	1.90	4.4	1.77			1.258
Sutton, Rudolph	4.2	1.57	5.9	1.68	4.6	2.28	4.0	1.75					1.818
Washington,Tyrone	4.8	2.00	3.7	1.40	4.2	2.00	5.5	2.09					1.861

CONCLUSIONS OF LAW

The Three-Judge Court adopts in full the factual findings of the single-Judge District Court. The factual issues having been resolved, the case is now before the Three-Judge Court for decision of the legal questions presented. Before reaching the constitutional questions presented, several procedural and jurisdictional issues must be considered.

CLASS ACTION

Plaintiffs seek to maintain this action "on behalf of all other students residing in the City of Columbus who are similarly situated and affected by the policy and usage complained of" in the complaint.

The prerequisites of a class action are that:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
>
> Rule 23(a), FED. R. CIV. P.

When the class is limited to all students of the Columbus Public Schools suspended on or after February, 1971, the class alleged satisfies each of these prerequisites. The Court determines that the class action is maintainable under the provisions of Rule 23(b)(2) in that the Columbus Public Schools and their employees have acted in accordance with §3313.66, Ohio Revised Code and guidelines established by the Department of Pupil Personnel in all suspensions.

JURISDICTION OVER THE SUBJECT MATTER

Title 42, United States Code, Section 1983 provides, in relevant part, that:

> Every person who, under color of any statute, or-

> dinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The complaint alleges that §3313.66, Ohio Revised Code, which provides that a "principal of a public school may suspend a pupil from school for not more than ten days" with a provision for notice to the student's parents and the clerk of the Board of Education, is unconstitutional.

Defendants argue that §3313.66, Ohio Revised Code is not the source of a principal's authority to suspend a student. Rather, defendants assert in their brief that "a school board and the local school officials possess historical inherent power" to discipline students.[5] Section 3313.66, Ohio Revised Code, defendants argue, is not a source of authority, but a limitation on school authorities' inherent

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[5] Defendants cite *Rumler* v. *Board of School Trustees*, 327 F.Supp. 729, 737 (D. S. C. 1971), *affirmed* 437 F.2d 953 (4th Cir. 1971), and the cases cited therein, in support of the inherent power of school officials to discipline students. See also, *Tate* v. *Board of Education*, 453 F.2d 975, 978-979 (8th Cir. 1972); *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195, 200 (6th Cir. 1969), *cert. denied* 399 U.S. 906 (1970); *Esteban* v. *Central Missouri State College*, 415 F.2d 1077, 1088 (8th Cir. 1969), *cert. denied* 398 U.S. 965 (1970); *Banks* v. *Board of Public Instruction*, 314 F.Supp. 285, 290 (S.D. Fla. 1970), *affirmed* 450 F.2d 1103 (5th Cir. 1970), *vacated to permit timely filing of notice of appeal*, 401 U.S. 988 (1971); *Jones* v. *State Board of Education*, 279 F. Supp. 190, 202 (M.D. Tenn. 1968), *affirmed* 407 F.2d 834 (6th Cir. 1969), *cert. dismissed as improvidently granted*, 397 U.S. 31 (1970), *rehearing denied* 397 U.S. 1018 (1970). *But see*, *Soglin* v. *Kauffman*, 418 F.2d 163, 167 (7th Cir. 1969). The Court in *Rumler* rejected plaintiffs' argument that they were denied due process of law when they were suspended without the protection of due procedural safeguards. However, the Court did not suggest that it was without subject matter jurisdiction to entertain the claim for relief under 42 U.S.C. §1983. Indeed, the Court denied the claim on the merits.

power to discipline students. Defendants contend that because they were acting pursuant to their inherent authority and not under color of state law pursuant to Section 3313.66, the complaint fails to establish that the Court has jurisdiction over the subject matter.[6] Article 6, §3 of the Ohio Constitution commands that:

> Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds. . . .

The Ohio Legislature has established school districts, Chapter 3311, Ohio Revised Code, which provide free public elementary and secondary education for every Ohio resident between the ages of six and 21 years.[7] Although imprecise usage has lead to the misconception that the power to discipline is "inherent", see 48 O. Jur. 2d Schools, §176, the power to discipline students is actually mandated by Section 3313.20, Ohio Revised Code, which provides in relevant part:

> The board of education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises. . . .

It is well-recognized in Ohio that boards of education are purely creatures of statute whose powers and duties are limited by the Legislature. *Verberg* v. *Board of Education*, 135 Ohio St. 246, 248 (1939); *Perkins* v. *Bright*, 109 Ohio St. 14, 21 (1923); *State ex rel. Clarke* v. *Cook*, 103 Ohio St. 465, 467 (1921).

When defendants acted to suspend plaintiffs they were

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[6] In their motion to dismiss defendants argue on similar grounds that the complaint fails to allege facts stating a cause of action. There has been a trial of the factual issues before a single-Judge, therefore the three-Judge Court will determine the issues on the merits, not by motion to dismiss.

[7] §3321.01, Ohio Revised Code.

acting under the color of Article 6, §3 of the Ohio Constitution, legislation implementing Article 6, §3, and the rules and regulations adopted by the school board and its delegates pursuant to §§3313.20 and 3313.66, Ohio Revised Code. There is no merit to defendants' contention that they were not acting under color of state law within the meaning of 42 U.S.C. §1983.

JURISDICTION OVER THE PERSON

Defendant Board of Education argues that the Court does not have jurisdiction over it, because it is not a "person" within the meaning of 42 U.S.C. §1983.[8]

Under Ohio law a board of education is a "body politic and corporate" which is "capable of suing and being sued". Section 3313.17, Ohio Revised Code. Even though it is not immune from suit,[9] an Ohio board of education is a political subdivision of the State. *See, Brown* v. *Board of Education*, 20 Ohio St. 2d 68, 71-72 (1969).

In *Monroe* v. *Pape*, 365 U.S. 167, 187-192 (1961), the Supreme Court held that a city was not amenable to a suit for damages under the provisions of 42 U.S.C. §1983 because the legislative history of the Civil Rights Act of 1871 demonstrated a Congressional intent that political subdivisions of a State not be included within the definition of a "person" under the Act.

Subsequent to the decision many federal courts recognized a distinction between suits for damages, which were

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[8] Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[9] Whether a board of education is a sovereign arm of the State cloaked with immunity which the State has waived or an entity which is not entitled to immunity because it is not sovereign is an unresolved question in Ohio. *Cf. Board of Education* v. *Volk*, 72 Ohio St. 469 (1905) with *State* v. *Gibson*, 130 Ohio St. 318, 322 (1935).

barred by *Monroe* v. *Pape*, and suits for declaratory and injunctive relief, which were considered actionable. *See, e.g., Dailey* v. *City of Lawton*, 425 F.2d 1037 (10th Cir. 1970); *Schnell* v. *City of Chicago*, 407 F.2d 1084 (7th Cir. 1968); *Atkins* v. *City of Charlotte*, 296 F. Supp. 1968 (W.D. N.C. 1969); *Cf. Monroe* v. *Pape*, 365 U.S. *supra* at 191, n. 50.[10] Applying this rationale some courts have held that a school board is a "person" within the meaning of 42 U.S.C. §1983 when the complaint seeks equitable relief only, and not damages. *Butts* v. *Dallas Independent School District*, 436 F.2d 728, 729 (5th Cir. 1971); *Harkless* v. *Sweeny Independent School District*, 427 F.2d 319 (5th Cir. 1970), *cert. denied* 400 U.S. 991 (1971); *Williams* v. *San Francisco Unified School District*, 340 F. Supp. 438, 438-439 (N.D. Calif. 1972); *Schreiber* v. *Joint School District No. 1*, 335 F. Supp. 745, 747 (E.D. Wis. 1972); *Callaway* v. *Kirkland*, 334 F. Supp. 1034, 1036-1037 (N.D. Ga. 1971); *Henson* v. *City of St. Francis School District*, 322 F. Supp. 1034 (E.D. Wisc. 1971); *Local 858 of A. F. of T.* v. *School District No. 1*, 314 F. Supp. 1069 (D. Colo. 1970); *Abel* v. *Gousha*, 313 F. Supp. 1030 (E.D. Wisc. 1970); *Porcelli* v. *Titus*, 302 F. Supp. 726 (D. New Jersey 1969); *Adams* v. *School Board*, 53 F.R.D. 267 (M.D. Pa. 1971). *See, Lee* v. *Board of Regents*, 441 F.2d 1257 (7th Cir. 1971). A number of other courts have held that a school board is not a "person" under the provisions of 42 U.S.C. §1983 regardless

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[10] Since the decision in *Monroe* v. *Pape* the United States Supreme Court has decided many cases in which equitable relief was sought under 42 U.S.C. §1983 against a state, city, or school board, without discussion of whether they are "persons" under the Act. *See, e.g., Baker* v. *Carr*, 369 U.S. 186 (1962); *Reynolds* v. *Sims*, 377 U.S. 713 (1964); *Raney* v. *Board of Education*, 391 U.S. 443 (1968); *Tinker* v. *Des Moines*, 393 U.S. 503 (1969); *Boddie* v. *Connecticut*, 401 U.S. 371 (1971); *Broadrick* v. *Oklahoma*, ___ U.S. ___ (1973); *San Antonio Independent School District* v. *Rodriguez*, ___ U.S. ___ (1973).

of the nature of the relief sought. *Kerr* v. *Clarenceville School District*, 344 F. Supp. 1244, 1246 (E. D. Mich. 1972); *Webb* v. *Lake Mills Community School District*, 344 F. Supp. 791, 807 (N.D. Iowa 1972); *Hayes* v. *Cape Henlopen School District*, 341 F. Supp. 823 (D. Del. 1972); *Gruelich* v. *Mounds View Independent Public School District*, 334 F. Supp. 1276, 1279 (D. Minn. 1972); *Conway* v. *Alfred I. DuPont School District*, 333 F. Supp. 1217, 1218 (D. Del. 1971); *Blount* v. *Ladue School District*, 321 F. Supp. 1245, 1250 (E.D. Mo. 1970); *Morey* v. *Independent School District*, 312 F. Supp. 1257 (D. Minn. 1969), *affirmed* 429 F.2d 428 (8th Cir. 1970); *Patton* v. *Bennett*, 304 F. Supp. 297, 299 (E.D. Tenn. 1969). Although the Sixth Circuit has not ruled on the exact question, it has taken the general position that political subdivisions of a state are not "persons" within the meaning of 42 U.S.C. §1983 regardless of the nature of the relief sought. *See, Deane Hill Country Club, Inc.* v. *City of Knoxville*, 379 F.2d 321, 323-324 (6th Cir. 1967).

Two recent United States Supreme Court decisions leave little doubt as to the proper resolution of the issue presented. In *Moore* v. *County of Alameda*, —— U.S. ——, 41 U.S.L.W. 4627 (1973), the Supreme Court held that a county was not a "person" within the meaning of 42 U.S.C. §1983 because it was not Congress' intention "to impose liability on political subdivisions of the States." In *City of Kenosha* v. *Bruno*, —— U.S. ——, 41 U.S.L.W. 4819 (1973), the Supreme Court held that Congress did not intend a distinction between actions for money damages and those for injunctive and declaratory relief in defining the word "person" in 42 U.S.C. §1983. Thus, if a governmental entity is a political subdivision of a State, it is not a "person" within the meaning of 42 U.S.C. § 1983 regardless of whether the suit is for legal or equitable relief.

The Columbus Board of Education is a political subdivision of the State of Ohio, and is, therefore, not a "person" within the meaning of 42 U.S.C. §1983. The Court HOLDS that the motion to dismiss the defendant, Columbus Board of Education, is meritorious, and therefore GRANTED.

Defendants further argue that if the Court does not have jurisdiction over the Columbus Board of Education, it cannot rule on the constitutionality of Section 3313.66, Ohio Revised Code and the regulation adopted pursuant to that section.

The United States Supreme Court in *Ex parte Young*, 209 U.S. 123, 159-160 (1908) stated the theory of liability under §1983:

> If the act which the state Attorney General seeks to enforce be a violation of the Federal Constitution, the officer in proceeding under such enactment comes into conflict with the superior authority of the Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the Supreme authority of the United States.

The named defendants acted under authority of State law as employees of the Columbus Board of Education. If the State law or their actions under color of that law deprived plaintiffs of their constitutional rights, the deprivation is actionable under §1983.

Defendants argue that only the Columbus Board of Education has the authority to abandon the present disciplinary procedures, and therefore the Court has no jurisdictions to declare the constitutionality of the statute and regulations and to enjoin their enforcement.

The Columbus School Board has no authority to license

its employees to violate the United States Constitution. If an employee of the Columbus Board of Education acts, under the authority of state law and regulations adopted pursuant thereto, in such a manner as to deprive someone of his constitutional rights, this Court has the power to declare the statute and regulations a nullity and to enjoin the employee from acting under the unconstitutional statute to deprive anyone of his constitutional rights. *Ex parte Young, supra.*

MOOTNESS

Defendants argue that the suspension guidelines adopted by the Department of Pupil Personnel on July 10, 1973 moot the constitutional question presented.

The new guidelines have no impact upon the constitutional claims of the named plaintiffs or of any member of the class they represent who was suspended prior to July 10, 1973.[11] If their suspensions were imposed without due process of law, they have a right to a declaration that the suspension procedure was unconstitutional and to the expunction of any reference to the suspension from all records maintained by the Columbus Public Schools. There is a present, live controversy, and not a moot action. *See, Golden* v. *Zwickler*, 394 U.S. 103, 110 (1969).

EXHAUSTION OF STATE COURT REMEDIES — ABSTENTION

Defendants contend that plaintiffs should have contested their suspensions and the constitutionality of §3313.66, Ohio Revised Code in the State courts of Ohio.[12]

There is no requirement under 42 U.S.C. § 1983 that

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[11] Plaintiffs have not engaged in conduct which would subject them to the newly adopted suspension procedures. Thus, they cannot sue on their own behalf or on the behalf of others for relief from the newly adopted suspension procedures. *See, Hall* v. *Beals*, 396 U.S. 45, 48-49 (1963).

[12] Defendants suggest the suspensions were reviewable under the provisions of §2506.01, Ohio Revised Code.

State court[13] remedies be exhausted prior to seeking federal relief. *Preiser v. Rodriguez*, — U.S. — (1973) (slip opinion pp. 1-2); *Houghton v. Shafer*, 392 U.S. 639 (1968); *King v. Smith*, 392 U.S. 309, 312 n. 4 (1968); *Damico v. California*, 389 U.S. 416 (1967); *McNeese v. Board of Education*, 373 U.S. 668, 671 (1963); *Monroe v. Pape*, 365 U.S. 167, 183 (1961).

Defendants also argue that the Court should abstain from determining the constitutionality of §3313.66, Ohio Revised Code, to permit the Ohio court to have the first opportunity to construe its terms. *See, Gibson v. Berryhill*, — U.S. — (1973); *Younger v. Harris*, 401 U.S. 37 (1971); *Samuels v. Mackell*, 401 U.S. 66 (1971); *Boyle v. Landry*, 401 U.S. 77 (1971); *Perez v. Ledesma*, 401 U.S. 82 (1971); *Dyson v. Stein*, 401 U.S. 200 (1971); *Byrne v. Karalexis*, 401 U.S. 216 (1971).

The Civil Rights Act of 1871 was intended by Congress to provide a federal remedy for the deprivation of constitutional rights which was supplementary to state remedies. *Monroe v. Pape*, 365 U.S. *supra* at 183. The federal remedy is not dependent upon a State remedy.

In the present case plaintiffs have no remaining administrative remedies. Their remedy, if any, is State court review of the administrative action resulting in their suspensions. Under such circumstances a federal court should not abstain from considering the constitutionality of a state statute. *See, Gibson v. Berryhill*, — U.S. — (1973), (slip opinion p. 13).

PROCEDURAL DUE PROCESS

The Fourteenth Amendment to the Constitution of the United States provides that no State shall:

> deprive any person of life, liberty, or property, without due process of law. . . .

[13] More accurately, the doctrine of exhaustion applies to administrative, not judicial, remedies. *Gibson v. Berryhill*, — U.S. — (1973) (slip opinion p. 10, n. 13).

The right to procedural due process applies to a broad spectrum of important private and governmentally created interests. *See, e.g., Vlandis* v. *Kline*, — U.S. —, 41 U.S.L.W. 4796 (1973) (Education. Proof of residence for entitlement to in-state fee rates); *Morrissey* v. *Brewer*, 408 U.S. 471 (1973) (Parole. Revocation of parole without hearing); *Stanley* v. *Illinois*, 405 U.S. 645 (1972) (Child custody. Father denied custody without fitness hearing); *Bell* v. *Burson*, 402 U.S. 535 (1971) (Driver's license. Uninsured motorist's driver's license suspended without hearing unless security posted following accident); *Wisconsin* v. *Constantineau*, 400 U.S. 433 (1971) (Reputation. Public posting of notice person not to be sold liquor); *Goldberg* v. *Kelly*, 397 U.S. 254 (1970) (Welfare benefits. Welfare benefits terminated without prior notice and hearing); *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969) (Wages. Wages garnisheed without notice or opportunity to defend); *Slochower* v. *Board of Education*, 350 U.S. 551 (1956) (Public employment. Teacher discharged without notice and hearing.)

When presented with an allegation that due process has been denied, the Court must first determine whether the interest left unprotected falls within the ambit of a liberty or property within the meaning of the Fourteenth Amendment. This is an inquiry into the *nature* of the interest at stake, not its *weight*. If it is a protected interest, the Court then looks at the weight of the interest and the extent of its deprivation to determine what process is due. *Board of Regents* v. *Roth*, 408 U.S. 564, 570-671 (1972); *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972).

The concept of liberty includes

> not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and

> bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

Those interests included within the concept of liberty are not limitless, but the United States Supreme Court has recognized that

> In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed. *Board of Regents* v. *Roth*, 408 U.S. *supra* at 572 [citations omitted]

The Supreme Court has not resolved the question of whether a student's statutory right[14] to an education is a liberty which is protected by due process of law. The Supreme Court has frequently referred to the importance of education in the American system of government. In *Brown* v. *Board of Education* the Court noted that:

> education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected

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[14] In Ohio primary and secondary education is given free to all school district residents between the ages of six and 21 years. Section 3321.01, Ohio Revised Code. School attendance is compulsory between the ages of six and 18 years. Section 3313.64, Ohio Revised Code.

to succeed in life if he is denied the opportunity of an education. 347 U.S. 483, 493 (1954).

See, *San Antonio Independent School District* v. *Rodriguez*, — U.S. —, 41 U.S.L.W. 4407, 4416 (1973); *Wisconsin* v. *Yoder*, 406 U.S. 205, 213 (1972); *Abington School District* v. *Schempp*, 374 U.S. 203, 230 (1963) (Brennan J., concurring); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *Meyer* v. *Nebraska*, 262 U.S. 390 (1923); *Williams* v. *Dade County School Board*, 441 F.2d 299, 302 (5th Cir. 1971); *Sullivan* v. *Houston Independent School District*, 333 F.Supp. 1149, 1172 (S.D. Tex. 1971); *Ordway* v. *Hargraves*, 323 F.Supp. 1155, 1158 (D. Mass. 1971); *Hosier* v. *Evans*, 302 F.Supp. 316, 319 (D. St. Croix 1970).

Recently in *San Antonio School District* v. *Rodriguez*, — U.S. —, 41 U.S.L.W. 4407 (1973) the Supreme Court was presented with the question of whether differential State aid to local school districts violates the equal protection clause of the Fourteenth Amendment. The Court, in determining whether the rational basis test, *United States* v. *Moreno*, — U.S. —, 41 U.S.L.W. 5105 (1973); *Gomez* v. *Perez*, — U.S. —, 41 U.S.L.W. 4174 (1973); *United States* v. *Kras*, — U.S. —, 41 U.S.L.W. 4117 (1973); *Jefferson* v. *Hackney*, 406 U.S. 535, 546 (1971); *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164, 172-173 (1972); *Richardson* v. *Belcher*, 404 U.S. 78, 81 (1971); *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970); *McGowan* v. *Maryland*, 366 U.S. 420, 426 (1961); *Morey* v. *Doud*, 354 U.S. 457, 465-466 (1957); *Williamson* v. *Lee Optical Co.*, 348 U.S. 483 (1955); *Gulf, Colorado & Santa Fe Ry.* v. *Ellis*, 165, 150 (1896); *Yick Wo.* v. *Hopkins*, 118 U.S. 356, 373-374 (1886), or the compelling state interest test, *Dunn* v. *Blumstein*, 405 U.S. 330, 341-343 (1972); *Shapiro* v. *Thompson*, 394 U.S. 618, 634, 638 (1969); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966); *Brown* v. *Board*

of Education, 347 U.S. 483 (1954), should be applied to the legislative scheme, stated that the right to an education was not explicitly or implicitly guaranteed by the Constitution. Consequently, the Court applied the rational basis test, not the compelling state interest test. *San Antonio School District* v. *Rodriguez*, — U.C. *supra* at —, 41 U.S.L.W. *supra* at 4416.

The Supreme Court's holding that the right to an education is not explicitly or implicitly guaranteed by the Constitution does not affect the determination of whether it is a liberty or property which cannot be interfered with by the State without the protection of due procedural safeguards. As noted above, interests included within the concepts of liberty and property are often created by the State which have no Constitutional status.[15]

The question presented is whether the State created right to an education is a protected liberty under the Fourteenth Amendment's due process clause.[16]

Since the decision in *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961) the lower federal courts have without exception recognized that a student has the due process right to notice and hearing prior to expulsion or suspension from school for a substantial period of time. *Woods* v. *Wright*, 334 F.2d 369 (5th Cir. 1964); *Esteban* v. *Central Missouri State College*, 415 F.2d *supra* at 1089; *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195, 200 (6th Cir. 1969), *cert. denied*, 399 U.S. 906 (1970); *Williams* v. *Dade County School Board*, 441 F.2d 299, 301-302 (5th Cir.

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[15] See, pp. 30-31, *supra*.

[16] The right to an education is not an interest traditionally considered to be within the concept of "property", even though an education undoubtedly has an economic as well as an intangible value. However, governmental entitlements in our modern society often take on the incidents of property. *See generally*, Reich, *The New Property*, 73 YALE L.J. 733 (1964).

1971); *Esteban* v. *Central Missouri State College*, 277 F. Supp. 649, 651-652 (W.D. Mo. 1967); *Jones* v. *State Board of Education of Tennessee*, 279 F.Supp. 190, 198 (M.D. Tenn. 1968), *affirmed*, 407 F.2d 834 (6th Cir. 1969) *cert. dismissed as improvidently granted*, 397 U.S. 31 (1970), *rehearing denied*, 397 U.S. 1018 (1970); *Stricklin* v. *Regents of the University of Wisconsin*, 297 F.Supp. 416 (W.D. Wisc. 1969); *Sullivan* v. *Houston Independent School District*, 307 F.Supp. 1328, 1337 (S.D. Tex. 1969); *Hobson* v. *Bailey*, 309 F.Supp. *supra* at 1401-1402; *Sullivan* v. *Houston Independent School District*, 333 F.Supp. 1149 (S.D. Tex. 1971); *DeJesus* v. *Penderthy*, 344 F.Supp. 70, 74-75 (D. Conn. 1972). Although suspension from school for a short period of time as opposed to a lengthy suspension or expulsion is a lesser interference with the right to education, the due process clause of the Fourteenth Amendment still cloaks the student. *Tate* v. *Board of Education of Jonesboro, Arkansas*, 453 F.2d *supra* at 979; *Farrell* v. *Joel*, 437 F.2d 160, 162 (2d Cir. 1971); *Esteban* v. *Central Missouri State College*, 415 F.2d *supra* at 1089; *Madera* v. *Board of Education of the City of New York*, 386 F.2d 778, 784-785 (2d Cir. 1967). No Court faced with the question has held that the right to an education is not within the concept of "liberty".

It is important to remember that even though the interference with the liberty of a right to education is limited, the student's right treated with procedural fairness prior to a deprivation of the right to an education is not lost. The magnitude of the deprivation affects the formality and comprehensiveness of the due process safeguards; it does not affect the basic fact that these safeguards shield the student from arbitrary or capricious interference with his right to education. In *Board of Regents* v. *Roth*, 408 U.S. 564, 470-571 fn. 7 and 8 Justice

Blackmun discussed the applicability of procedural due process to protected Fourteenth Amendment liberties:

> Before a person is deprived of a protected interest, he must be afforded opportunity for some kind of a hearing 'except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event'. *Boddie* v. *Connecticut*, 401 U.S. 371, 379. While '[m]any controversies have raged about . . . the due process clause' . . . it is fundamental that except in emergency situations (and this is not one) due process requires that when a state seeks to terminate [a protected] interest . . . , it must afford 'notice and opportunity for hearing appropriate to the nature of the case' *before* the termination becomes effective *Bell* v. *Burson*, 402 U.S. 535, 542. For the rare and extraordinary situations in which we have held that deprivation of a protected interest need not be preceded by opportunity for some kind of a hearing, *See e.g., Central Union Trust Company* v. *Garvan*, 254 U.S. 554, 566; *Phillips* v. *Commissioner*, 283 U.S. 589, 597; *Ewing* v. *Mytinger and Casselberry, Inc.*, 339 U.S. 594.
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> . . .
>
> Formality and procedural requisites of a hearing vary with the relative importance of interests involved and the nature of the subsequent proceedings. *Boddie* at 378. But the constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest, of course, does not depend upon such a narrow balancing process.

If education is a protected liberty when expulsion is involved, then it remains a liberty when suspension occurs. The right to an education is the interest being afforded procedural protection. It either is, or is not a liberty

under the Fourteenth Amendment. The difference between expulsion and suspension becomes important only when the Court confronts the question of what process is due to protect the Fourteenth Amendment liberty.

Considering the importance of education in our society today, the Court HOLDS that the State created entitlement to an education is a liberty protected by the due process clause of the Fourteenth Amendment.

The Court now turns to the more difficult question of what process is due a student before the State may deprive him of his right to an education by imposing a suspension not to exceed 10 days.

The primacy of the educator in the school has been unquestioned by the Courts. The Courts have consistently reaffirmed the right of school administrators to manage their school systems without interference from the Courts, so long as the basic commands of the Constitution are honored.

The Courts have repeatedly emphasized the need for affirming the comprehensive authority of the states and of school officials consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. *Tinker* v. *DesMoines School District*, 393 U.S. 503, 507 (1969). *See also, Epperson* v. *Arkansas*, 393 U.S. 97, 104 (1968); *Bright* v. *Nunn*, 448 F.2d 245 (6th Cir. 1971); *Robinson* v. *Board of Regents*, No. 72-1867 (6th Cir. March 28, 1973); *Tate* v. *Board of Education of Jonesboro*, *Blackwell* v. *Issaquena City Board of Education*, 363 F.2d 749, 753 (5th Cir. 1966); *Jackson* v. *Dorrier*, 424 F.2d 213, 218-219 (6th Cir. 1970), *cert. denied*, 400 U.S. 950 (1970); *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195 (6th Cir. 1969); *Banks* v. *Board of Public Instruction of Dade County*, 314 F.Supp. 285, 289 (S.D. Fla. 1970), *affirmed*, 450 F.2d 1103 (5th Cir.

1971), *vacated to permit timely filing of appeal*, 401 U.S. 988 (1971).

The Courts have vigorously asserted the right, and indeed the duty of school administrators to prohibit student behavior which materially disrupts classwork, endangers property or interferes with the rights of other students. *Tinker* v. *Des Moines School District*, 393 U.S. *supra* at 513; *Soglin* v. *Kauffman*, 418 F.2d 163, 167 (7th Cir. 1969); *Esteban* v. *Central Missouri State College*, 415 F.2d 1077, 1087 (8th Cir. 1969); *Gardenhire* v. *Chalmers*, 326 F.Supp. 1200, 1202 (D. Kan. 1971); *Hobson* v. *Bailey*, 309 F.Supp. 1393, 1400 (W.D. Tenn. 1970); *General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Learning*, 45 F.R.D. 133, 141 (W.D. Mo. *en banc* 1968). Remembering that school officials are better suited to make decisions affecting their institutions, the Court nonetheless is Constitutionally bound to insure that the student be afforded the minimum procedural process mandated by the Constitution.

The nature of the due process protection of the right of education is dependent on the severity of the sanction. *Tate* v. *Board of Education of Jonesboro, Arkansas*, 453 F.2d *supra* at 979; *Farrell* v. *Joel*, 437 F.2d *supra* at 162; *Jackson* v. *Hepinstall*, 328 F.Supp. 1104, 1106 (N.D. N.Y. 1971); *Rumler* v. *Board of School Trustees for Lexington County*, 327 F.Supp. 729, 744 (D. S.C. 1971), *affirmed* 437 F.2d 953 (4th Cir. 1971); *Gardenhire* v. *Chalmers*, 326 F. Supp., *supra* at 1203. When the sanction is a short suspension as opposed to a lengthy suspension or expulsion, more informal procedures may be adopted by school authorities who make the disciplinary determination. *Tate* v. *Board of Education, of Jonesboro, Arkansas*, 453 F.2d *supra* at 979; *Farrell* v. *Joel*, 437 F.2d *supra* at 163; *DeJesus* v. *Penberthy*, 344 F.Supp. *supra* at 74; *Jackson*

v. *Henpinstall*, 328 F.Supp. *supra* at 1106; *Rumler* v. *Board of School Trustees for Lexington County*, 327 F.Supp. *supra* at 744; *Schwartz* v. *Schuker*, 298 F.Supp. 239 (E.D. N.Y. 1969).

All courts which have considered the problem have recognized the authority of school administrations to suspend students for a short period without a hearing if an emergency situation requires the removal of the disruptive student from the school to restore an academic atmosphere. *Williams* v. *Dade County School Board*, 441 F.2d *supra* at 301; *Sullivan* v. *Houston Independent School District*, 333 F.Supp. *supra* at 1172; *Gardenhire* v. *Chalmers*, 326 F.Supp. *supra* at 1205; *Banks* v. *Board of Public Instruction of Dade County*, 314 F.Supp. *supra* at 291-292; *Hobson* v. *Bailey*, 309 F.Supp. *supra* at 1400; *Buck* v. *Carter*, 308 F.Supp. 1246, 1249-1250 (W.D. Wisc. 1970); *Stricklin* v. *Regents of the University of Wisconsin*, 297 F.Supp. *supra* at 420.

Due process is not a straitjacket imposed by the Courts upon educators. The minimum requirements of notice and a hearing prior to suspension, except in emergency situations, does not require inflexible procedures. Courts must be mindful not to require educators to follow specific or particular procedural frameworks. Due process is satisfied if the procedures are "reasonably calculated to be fair to the student and lead to a reliable determination of the factual issues involved." *Gardenhire* v. *Chalmers*, 326 F. Supp. *supra* at 1202-1203. As the District Court stated in *DeJesus* v. *Penberthy*, 344 F.Supp. *supra* at 74:

> School authorities must be given discretion within wise limits to find facts and assess their significance. Their knowledge of the context within which discipline problems arise entitles their judgment to be accorded great weight. On the other hand, there is less reason to accord such authorities as much discretion in fashioning procedures. However flexible the

> contours of due process may be in the ascertainment of the outer limits is a judicial function under the Fourteenth Amendment. Of course, school authorities must have some discretion in developing fair procedures. Hopefully, they will not assume that the minimum requirements of the due process clause as determined by the courts are all that they, as school administrators, should determine to accord students as a matter of sound educational policy.

The Fourteenth Amendment due process requirement of notice in a hearing are "nothing more than fair play." *Banks* v. *Board of Public Instruction of Dade County*, 314 F.Supp. *supra* at 291. If school administrators follow procedures which result in a fair factual determination made after notice and an opportunity to defend against the charges of misconduct, then no matter how informal the procedure, the student has been accorded the minimum requirements of the due process clause of the Fourteenth Amendment of the Constitution of the United States.

The decisions which have dealt with the subject in the composite provide that a minimum procedural fairness requires:

1. Immediate removal of a student whose conduct disrupts the academic atmosphere of the school, endangers fellow students, teachers or school officials, or damages property.
2. Immediate written notice to the student and parents of the reason(s) for the removal from school and the proposed suspension should be given within 24 hours.
3. Not later than 72 hours after the actual removal of the student from school, the student and his parents must be given an opportunity to be present at a hearing before a school administrator who

will determine if a suspension should be imposed. Such hearing, which is not a judicial proceeding, must provide at a minimum

(a) Statements in support of the charge(s) against the student upon which the hearing is conducted.

(b) Statements by the student and others in defense of the charge(s) and or in mitigations or explanation of his conduct.

(c) The administrator is not required to permit the presence of counsel or follow any prescribed judicial rules in conducting the hearing.

(d) The administrator should, within 24 hours advise the student and his parents by letter of his decision and the reasons therefor.

School administrators are free to adopt regulations providing for fair suspension procedures which are consonant with the educational goals of their schools and reflective of the characteristics of their school and locality. There is no one way to insure fairness in the suspension process. The choice of the best procedure for a particular school system should be left to the school officials charged with the administration of that school system.

In the present case plaintiffs were not accorded a hearing. The conference required by school regulations following suspension was not a fact-finding hearing, but rehabilitative in nature. None of the named plaintiffs were in fact afforded even this conference. There is no evidence in the record that any of the plaintiffs voluntarily relinquished their right to a hearing.

The Court HOLDS that plaintiffs were not accorded due process of law in that they were suspended without

hearing prior to suspension or within a reasonable time thereafter.[17]

The Court ORDERS that references to the suspensions of plaintiffs or members of their class be removed from all records of the Columbus Public Schools.

VAGUENESS AND OVERBREADTH

Plaintiffs contend that the disciplinary regulations under which they were suspended are void because they are unconstitutionally vague and overbroad. *See, e.g., Baggett* v. *Bullit*, 377 U.S. 360, 367-378 (1964); *Champlinsky* v. *New Hampshire*, 315 U.S. 568, 573 (1942); *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453 (1939); *Grayned* v. *City of Rockford*, 408 U.S. 104, 114-115 (1972); *Zwickler* v. *Koota*, 389 U.S. 241, 249-250 (1967).

The concepts of vaguenes sand overbreadth are safeguards against governmental intrusion upon First Amendment rights. *See, Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 168 (1973). Plaintiffs have failed to prove that their conduct at the time of their suspensions was entitled to First Amendment protection. On the contrary, the evidence establishes that the various school administrators acted to restore order and discipline in their schools. In such circumstances, the action of school administrations does not contravene the First Amendment. *See, Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d *supra* at 200; *Esteban* v. *Central Missouri State College*, 415 F.2d *supra* at 1088; *Banks* v. *Board of Public Instruction*, 314 F.Supp. *supra* at 290; *Jones* v. *State Board of Education*, 279 F.Supp. *supra* at 202.

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[17] This holding does not reflect upon the wisdom or propriety of the suspensions themselves. Philip Fulton's testimony fully supports the suspensions he imposed. However, the Court does not review the appropriateness of the suspension. The limited issue is whether the procedure employed met the minimum standards of due process. The Court holds that it did not.

Supreme Court, U. S.
FILED
APR 17 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, ET AL.,
Appellants

v.

EILEEN LOPEZ, ET AL.,
Appellees

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

BRIEF OF APPELLANTS

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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, ET AL.,
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v.

EILEEN LOPEZ, ET AL.,
Appellees.

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

BRIEF OF APPELLANTS

OPINION BELOW

The opinion filed by the Three-Judge District Court for the Southern District of Ohio, Eastern Division, has not been reported. That opinion and order is reprinted in Appellant's Jurisdictional Statement as Appendix B.

JURISDICTION

The judgment of the District Court was entered on September 17, 1973. Appellants filed their notice of appeal with the District Court on November 9, 1973. The

Jurisdictional Statement was filed December 7, 1973. Probable jurisdiction was noted on February 19, 1974. The jurisdiction of this Court to review the judgment below is invoked pursuant to 28 U.S.C. §1253.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED:

1. United States Constitution, Amendment XIV §1. ". . . , nor shall any state deprive any person of life, liberty, or property, without due process of law; . . ."

2. Section 3313.66 of the Ohio Revised Code: "§3313.66 Suspension or expulsion.

The superintendent of schools of a city or exempted village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall within twenty-four hours after the time of expulsion or suspension, notify the parent or guardian of the child, and the clerk of the board of education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester."

QUESTIONS PRESENTED

The following questions were presented by the jurisdictional statement and will be considered in this brief:

1. Where the United States Supreme Court has concluded that the importance of education alone will not elevate education to the status of a fundamental right guaranteed either explicitly or implicitly by the Federal Constitution and where the lower court has recognized that education is not a property right, may a district court hold that education is a liberty protected by the Federal Constitution solely on the basis that it is important?
2. Is a statute, providing for a temporary limited suspension by a principal of a local school, which has not been determined to result in condemning students to suffer grievous loss, subject to the procedural protections required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution?
3. Can a State create a liberty which is recognized as being subject to protection by the Fourteenth Amendment of the United States Constitution?

STATEMENT OF THE CASE

Appellees at the time of filing their complaint were a group of students enrolled in several different schools located in Columbus, Ohio (A. 5-10) They were suspended during a period of time in which disruptions were occurring or had occurred in the schools (A. 86-102; 123, 127, 131, 135) Four of the plaintiffs at the time of suspension were beyond the compulsory attendance age (A. 45). The complaint asserted that Section 3313.66 of the Ohio Revised Code and the rules adopted by the

Board of Education violated Appellees' constitutional and statutory civil rights. Jurisdiction of the District Court was asserted under the Civil Rights Act of 1871, 42 U.S.C. §1983, 28 U.S.C. §§1343(3), 2201 and 2202 and the Due Process Clause of the Fourteenth Amendment. The action was prosecuted as a class action.

Appellants contested the request by Appellees that a three-judge court be convened claiming that a question did not exist such as necessitated convening such a court. (A. 25) At the same time Appellants also filed a motion to dismiss the complaint asserting in part that the complaint did not state facts upon which relief could be granted. (A. 15) No specific ruling was ever made of this branch of the motion.

A three-judge court was ordered convened by an order of the Chief Judge of the United States Court of Appeals for the Sixth Circuit filed October 4, 1971. (A. 34-35)

Following the convening of the three-judge court, Appellants, at the request of the court, while not abandoning the motion to dismiss previously filed, filed an answer containing several defenses. The answer denied a proper assertion of the Court's jurisdiction. (A. 37)

The cause was tried on July 16, 1973, during which time Appellants presented the testimony of the Superintendent of Schools by deposition, explaining the manner in which suspension procedures were administered within the school system. Testimony in the form of a deposition by one of the principals of the involved schools was also presented. He explained the disruptive situation that occurred at Marion-Franklin High School which led to the suspensions. During this period of time, we find such things as refusals to go to class, refusals to clear the halls, blocking the stairways, refusal to follow directions and outside agitation all occurring. (A. 86-102)

Finally, Norval Goss, Director of Pupil Personnel, demonstrated through an exhibit he had prepared that subsequent to the suspensions at bar, the involved students proceeded with their education, maintaining the same or better point hour average than they had prior to being suspended. (A. 286)

All Appellees, either graduated or moved on to the next grade (A. 125, 133-134, 143, 152-153, 154)

In addition to contesting their involvement in particular incidents which occurred in the involved high schools, Appellees presented several psychologists and a guidance counselor who testified in general terms that a suspension can harm a student. Neither the psychologists or the guidance counselor had any knowledge respecting the involved students. They did not interview any of the students and had not studied their records. They presented no evidence that the involved students representing the class had sustained harm of any type. (A. 161-162; 176-177 188) The testimony of the psychologist and guidance counselor proceeded over objection and a motion to strike.

Following the trial, Appellants on July 17, 1973, filed a formal motion to dismiss the case for failure on the part of Appellees to establish that they had been deprived of a federally protected statutory right or a right guaranteed by the Fourteenth Amendment of the United States Constitution and because of the failure on the part of Appellees to establish, by the proper degree of proof, that Section 3313.66 of the Ohio Revised Code was unconstitutional. (A. 287) No specific ruling on this motion was ever made.

On August 31, 1973, Appellees, filed an amended complaint naming substituted parties defendant. At the request of the Court, Appellants filed an answer on be-

half of the substituted parties. In addition to setting forth a series of defenses, the answer denied that the Court was properly exercising its jurisdiction. (A. 303)

The Court rendered its opinion and order on the same day that the answer was filed. The Court, with respect to all plaintiffs, found that Section 3313.66 of the Ohio Revised Code violated the Due Process Clause of the Fourteenth Amendment. Nevertheless, in its opinion, the Court stated that school administrators had acted only to restore order and discipline in their schools, and further, the court found no suspension to be unwarranted. (Jurisdictional Statement p. 65)

SUMMARY OF ARGUMENT

The instant case presents a situation in which it is important from the outset to recognize that the term "education," where questions of Constitutional guarantees and protections are presented, can be used in two distinctly different contexts. Education is used to describe the educational system and participation in a particular system or school. Apart from education in a participation context is "education" in the larger philosophical sense of the right to pursue knowledge and the right of parents to control and direct their children's destiny. In using the term in this latter sense, we are concerned with a liberty interrelated to the right of free choice. It is education in this larger sense, of the pursuit of knowledge independent of any system, which this Court has recognized as being protected by the Constitution.

Education in the sense of participation in a state educational system or a particular school is not, in and of itself, a matter of constitutional right. This is not to say that a student has no constitutional rights in his relation-

ship to the system. Certainly, the student retains all the clearly identified constitutional rights. However, absent a violation of those identifiable constitutional rights, participation in a public educational system, standing alone, is not another constitutional right. The state creates a system of public education and as a part of the system establishes a system of internal student discipline. The system is created by the state to serve its purposes of protection and perpetuation. Discipline and order are integral parts of, and necessarily essential to, the internal management of the system.

In answering the questions posed by the Constitutional challenge to Section 3313.66 of the Ohio Revised Code, it is important to recognize and maintain the above distinction. Suspension, and even expulsion, standing alone relate only to participation in a particular school or educational system. Partipation in a particular school or educational system is not a right of liberty or property protected by the Constitution. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 36 L. Ed. 2d 16, 44 (1973).

The challenged statute (Section 3313.66 of the Ohio Revised Code) represents a proper legislative enactment in an area (the internal management of its system) resting within the province of the States. Particularly is the above analysis and the conclusions that follow true in the present case where questions relating to violations of rights of free speech and free choice, and questions relating to discrimination, race and unequal application were missing. It is only where a statute impinges upon a fundamental (substantive) right protected by the Constitution sharply implicating the substantive right, that a right to an immediate hearing arises. Participation in a particular system or form of system is not one of

those fundamental or substantive rights, *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 36 L. Ed 2d 16, 59-60, concurring opinion of Justice Stewart.

The Government function (internal management of its system) involved in this case did not touch and sharply implicate any basic right of liberty or property possessed by Appellees. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 36 L. Ed. 2d 16, 44 (1973). Questions relating to the internal management of the educational system and the form that management should take should have been directed to the legislature. *Jackson v. Hepenstall*, 328 F. Supp. 1104 (1971) and *Negron v. Wallace*, 436 F. 2d 1139, 1141 (1971). The definition of the relationships that will exist between the managers of the educational system and participants in the system are legislative functions. *San Antonio Independent School District v. Rodriguez*, 411 U.S.l 1, 36 L. Ed. 2d 16, 41-43 (1973).

Even if this Court found that student participation in a State educational system is a liberty protected by the Due Process Clause, then the liberty is violated only where the individual suffers a severe detriment or grievous loss. The record of the instant case clearly demonstrates the complete absence of a severe detriment or grevious loss suffered by any student.

The decision of the District Court should be reversed.

ARGUMENT

(a) THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION DOES NOT ESTABLISH PARTICIPATION AS A STUDENT IN A STATE SYSTEM OF PUBLIC EDUCATION TO BE A MATTER OF CONSTITUTIONAL RIGHT.

IMPORTANCE ALONE DOES NOT CREATE SUCH A RIGHT.

The creation of State systems of public education has not served to create a new Constitutional due process right by reason of the opportunity afforded students to participate in such systems. This is not to say that through becoming a student, an individual forfeits Constitutional rights in his relationship to the system. The present case presents a situation in which the clearly identified Constitutional rights possessed by Appellees were not involved. There was no action by the State against their rights of free speech; the State was not shown to have discriminated against them; no action was taken against their right of free choice; there was no showing that an improper consideration (suspect criteria) such as race was involved and no showing that the law was being unequally applied. Thus, the three-judge Federal District Court faced with a situation wherein the State was performing the internal function of managing those who wished to participate in its system, found that a statute (Section 3313.66 of the Ohio Revised Code), which restricted the powers of management possessed by school administrators, violated the Due Process Clause of the Fourteenth Amendment.

In 1972, this Court in *Board of Regents v. Roth*, 408 U.S. 564, at 569-570, 33 L. Ed. 2d 548, (1972) stated very clearly that the requirements of procedural due process do not protect every interest:

> " 'The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite.' " See Com-

ment, "Liberty," "Property" and Procedural Due Process, 5 Conn. L. Rev. 685 (1972).

The chief factor in every situation relates not to the importance of the interest involved, but to whether or not a fundamental right of liberty or property is at stake. *Roth*, 408 U.S. 564, 571 (1972). This approach does not represent a departure from this Court's prior views as to the application of the Due Process Clause. Paul G. Kauper, "Penumbras, Peripheries, Emanations, Things Fundamental and Things Forgotten": The *Griswold* Case, 64 Mich. L. Rev. 235, 257 (1965-66).

In 1973, this court in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 36 L. Ed. 2d 16, 44, (1973) in addressing itself to the issue relating to whether or not education in the sense of the form of the state system and student participation in that system is a matter of Constitutional right concluded:

> "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. * * *"[1]

In the context of the pure fact situation presented by the instant case, in which the constitutional question relating to an asserted violation of the Due Process Clause is raised, the above principle, namely, that participation in the State educational system is neither explicitly nor implicitly guaranteed by the Constitution,

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[1] The above principle has been recognized in later cases. *Sturgis v. State of Washington*, 368 F. Supp. 38, 41, affirmed 94 S. Ct. 563 (1973). It has also been recognized in *Stock v. Texas Catholic Interscholastic League*, 364 F. Supp. 362, (1973) and *Kister v. Ohio Board of Regents*, 365 F. Supp. 2739 (1973). Even prior to this Court's decision in *Rodriguez*, 36 L. Ed. 2d 16, 44, (1973) it had been recognized that education was not one of the fundamental rights guaranteed by the Constitution. *Flemming v. Adams*, 377 F. 2d 975, 977 (1967) and *Johnson v. Hackett*, 284 F. Supp. 933, 939 (1968). The commentators are also showing recognition, James Mize, *San Antonio Independent School District v. Rodriguez*: A study of Alternatives Open To State Courts, 8 University of San Francisco L. Rev. 90, 100 (1973).

takes on particular significance. If this Court remains committed to the philosophy of interpretation of the Due Process Clause that rests upon selective incorporation into the Fourteenth Amendment of certain of the enumerated rights found in the Bill of Rights, in addition to other rights not found specifically enumerated but secured as being "penumbras of the Bill of Rights," then, the Federal District Court in the instant case was not confronted with a statute which impinged upon those rights. *Griswold v. Connecticut,* 381 U.S. 479, 499, 14 L. Ed. 2d 510, 524, (1965), concurring opinion of Mr. Justice Harlan and Paul G. Kauper, "Penumbras, Peripheries, Emanations, Things Fundamental and Things Forgotten: The *Griswold* Case, 64 Mich. L. Rev. 235, 257 (1965-66). The result in *Rodriguez,* 411 U.S. 1, 36 L. Ed. 2d 16, 44 (1973), takes on further significance when it is remembered that the Due Process and Equal Protection Clauses are not mutually exclusive; *Bolling v. Sharpe,* 347 U.S. 497, 499, 98 L. Ed. 884, 886 (1954). Certainly that principle must hold true where the issue to be decided is whether a liberty or property right is involved.

Roth, 408 U.S. 564 (1972) and *Rodriguez,* 411 U.S. 1 (1973) support a conclusion that this Court has not departed from that approach. That being the case, the District Court was not faced with a situation in which the students' rights of liberty or property were being violated. The difficulty arises due to the District Court's willingness to determine the reach of the Due Process Clause based upon a completely different approach, an approach rejected by this Court. The District Court quite clearly concluded that the importance of education (participation in the state educational system) is sufficient to elevate it to the status of a liberty protected by the Fourteenth Amendment. (See Jurisdictional Statement p.

60). In *Rodriguez*, 411 U.S. 1, 36 L. Ed. 2d 16, 41-42, (1973) this Court rejected the concept that the reach of the Fourteenth Amendment should be determined on the basis of the importance of a particular subject matter or area. Importance does not identify what is and what is not a constitutionally protected right. The use of such a factor would ultimately lead to a conclusion that the Due Process Clause of the Fourteenth Amendment applies to everything. Such a course this Court has declined to follow. A further rejection of the factor of 'importance' as a determining constitutional element can also be found in *Shapiro v. Thompson*, 394 U.S. 618, 661, 22 L. Ed. 2d 600, 631 (1969) and *Lindsey v. Normet*, 405 U.S. 56, 31 L. Ed. 36, 74 (1972).

The question whether or not a person's pursuit of knowledge is a Constitutionally protected freedom of choice or liberty is not to be confused with compulsory attendance in a State created educational system. Pure questions relating to the manner in which a public school system will be internally managed, as well as the power to be given the managers of the system, are questions resting with the State. *Cafeteria and Restaurant Workers Union v. McElroy*, 367 U.S. 886, 896, 6 L. Ed. 2d 1230, 1236 (1961). Whether or not there should be enforced discipline; the form that discipline should take; the person that will enforce such discipline; are questions properly directed to the State legislative body. The Fourteenth Amendment does not grant to federal courts powers to establish and set the limits of such a policy. *Dandridge v. Williams*, 397 U.S. 471, 486, 25 L. Ed. 2d 491, 502 (1970) and *Communist Party v. S.A.C. Board*, 367 U.S. 1, 72, 6 L. Ed. 2d 625, 675 (1961).

This case does not involve questions of race and invidious discrimination; it does not involve questions

surrounding the First Amendment, it does not involve an invasion of the right of free choice, including the right of parents to control their children. The Due Process Clause of the Fourteenth Amendment was not violated.

The present case is an ideal example of a situation in which those rights guaranteed by the Due Process Clause were never implicated. The instant case fits squarely within the admonition of this Court in *Epperson v. Arkansas*, 393 U.S. 97, 104, 21 L. Ed. 2d 228, 234, (1968)

> "By and large, public education in our nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values. * * *" (Compare *Ware v. Estes*, 328 F. Supp. 657, aff'd. 458 F. 2d 1360 (1972) and *Holroyd v. Eibling*, 116 Ohio App. 440, 445-46 (1962).

The District Court while recognizing that the school administrators were acting to restore order and discipline in their respective schools, struck down Section 3313.66 of the Ohio Revised Code in the interest of establishing a policy with respect to discipline in the schools; a question properly directed to the State legislature. (See Jurisdictional Statement P. 65) This it did in a situation where no prior hearing was required under the statute.

Moreover, the District Court's conclusion that participation in a public school system created by the State legislature is a liberty protected by the Due Process Clause based on the fact that education is important, does not appear to be supported by any historical analysis of the concept of education. Historically, education

(apart from participation) is not something which emanates from the State, but is a matter of individual and parental concern. This concept finds expression in *Meyer v. Nebraska*, 262 U.S. 390, 400, 67 L. Ed. 1042, 1045 (1923).

> "***. Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; ***."

The concept is further explained in *Pierce v. Society of Sisters of Holy Names*, 268 U.S. 510, 535, 69 L. Ed. 1070, 1073 (1925):

> "The fundamental theory of 'liberty' upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty to recognize and prepare him for additional duties."

The perspective from which the educational system created by the State must be viewed is one which recognizes that the interest of the State in creating the system is not solely or basically for the purpose of furthering the interests of the individual, but to protect itself:

> "The ultimate justification for state compelled school attendance is nothing other than that the whole population must have training adequate to enable it (the State) to defend its boundaries and to sustain the activities which are indispensable to its material life. Attendance at school is no more required in the sole interest of the individual than is service in the armed forces. Both are limitations on freedom of choice imposed by practical necessity." George K. Gardner, "Liberty, The State, and The School," 20 Law and Contemporary Problems, 184, 193 (1955). (material added)

In terms of the historical analysis of education as an individual pursuit, attendance or participation in the State educational system can be viewed as a limitation upon one's liberty rather than as creating a new right of liberty. The District Court's conclusion that participation on a compulsory basis in a State educational system creates a constitutional liberty is not correct. It does not even comport with either the older or newer understandings as to the meaning of the term liberty.[2]

No need exists for taking such a view of liberty as was taken by the District Court in this case. Public schools should only be viewed as a competing system in which the State seeks to achieve the ends of protecting itself and insuring its perpetuation. Public schools were not, and should not, be viewed as something created in the sole interest of the individual. George K. Gardner, "Liberty, The State, and The School," 20 Law and Contemporary Problems 184, 193 (1955). Recognition that public schools were created by the State in the interest of the individual leads directly to the conclusion that a limitation has been placed on the individual's freedom of choice.

It is particularly important, as is this analysis important, that an individual's freedom of choice remain. Education today is in an evolutionary state. The shape it will take for the future is not leaning toward a conclusion that the individual must look to the State to pro-

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[2] Shattuck, "(The True Meaning of the Term 'Liberty' in Those Clauses in the Federal and State Constitution Which Protect Life, Liberty and Property,'" 4 Harvard L. Rev. 365 (1890-91) Charles A. Reich "The New Property," 73 Yale L.J. 733, 771, 774 (1964). Liberty is and must remain more than something "deliberately constructed by society." The "liberty" set forth in the Due Process Clause flows from natural law. John Stuart Mill, "Utilitarianism and Other Writings," World Publishing Company 126, 137-138 (1962); Corwin, "The Constitution And What it Means Today," Princeton University Press, 391-395 (1973) and *Poe v. Ullman*, 367 U.S. 497, 543, 544, 6 L. Ed. 2d 989, 1019-1020 (1961) dissenting opinion of Justice Harlan.

tect his interest. Serious questions are being raised, none of which support a conclusion that an individual's interest in education is something derived from the State. Alexander M. Bickel, "The Supreme Court and the Idea of Progress," Harper and Row (1970) 103-176, Christopher Jencks, "Is the Public School Obsolete" The Public Interest 18 (1965-66); Christopher Jencks, "Inequality: A Reassessment of the Effect of Family and Schooling in America," (New York: Basic Books, 1972 and Daniel P. Moynihan, "Maximum Feasible Misunderstanding," The Free Press, New York, 167, 194-195 (1969.)

Section 3313.66 of the Ohio Revised Code is not a statute which impinges upon "liberty," broadly defined. It does not shock the conscience of mankind to say that the administration of order and discipline with a public school system is an internal matter within the province of local school administrators and parents.

Appellees in this situation did not meet the burden of demonstrating that the school board rules and the State statute served a purpose other than legitimate administrative and management concerns. *Tinker v. Des Moines Community School District*, 393 U.S. 503, 526, 21 L. Ed. 2d 731, 749. (1968)

The District Court, for practical purposes, agreed. (Jurisdictional Statement p. 65). The statute under attack (Section 3313.66 of the Ohio Revised Code) never lost its presumption of constitutionality; it did not impinge upon constitutionally protected rights. *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450, 465, 89, L. Ed. 1727, 1737 (1944) and *Becker v. Levitt*, 489 F. 2d 1087, 1091 (1973).

A violation of the Due Process Clause guarantees of liberty and property did not exist in this case.

(b) A FUNDAMENTAL RIGHT PROTECTED BY THE DUE PROCESS CLAUSE IS VIOLATED ONLY WHERE A PERSON SUFFERS A SEVERE DETRIMENT OR GRIEVOUS LOSS.

Analysis of this Court's opinions in litigation where it is claimed that the Due Process Clause of the Fourteenth Amendment is violated, support the conclusion that for a violation of a fundamental right to occur, one must establish that not only is a fundamental right involved, but that one has suffered a severe detriment as a result of the governmental function under review. In *Morrissey v. Brewer*, 408 U.S. 471, 481, 33 L. Ed. 2d 484, 494 (1972) the Court said:

> "Whether any procedural protections are due depends on the extent to which an individual will be condemned to suffer grievous loss.' * * *.[3]

Goldberg v. Kelly, 397 U.S. 254, 264, 25 L. Ed. 2d 287, 297 (1970) contained the following expression:

> "Thus the crucial factor in this context—a factor not present in the case of the black-listed government contractor, the discharged government employee, the taxpayer denied a tax exemption or virtually anyone else whose governmental entitlements are ended—is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks inde-

[3]Subjecting a secondary school student to a one to ten day suspension as a part of managing and controlling the system is no more drastic in a constitutional sense than reasonable corporal punishment. Such suspension has no greater impact than does the nonretention of a teacher, *Board of Regents v. Roth*, 408 U.S. 564, 33 L. Ed. 2d 548, 559 (1972). Compare with the types of personal impacts recognized by the court in *Suarez v. Weaver*, 484 F. 2d 678, 680 (1973), "the distinction between charges which trigger procedural protection and those that do not has yet to be drawn * * *. On the other hand, past cases establish that charges which may become public and which suggest immorality, dishonesty, mental deficiency, or abnormal emotional imbalance invoke due process considerations."

pendent resources, his situation becomes immediately desperate. * * * " See also *Skinner v. Oklahoma*, 316 U.S. 535, 86 L. Ed. 1665, (1942) *Sniadach v. Family Finance Corp.*, 395, U.S. 337, 340-342, 23 L. Ed. 2d 349, 353, 354, (1969) and *Roe v. Wade*, 410 U.S. 113, 156. (1973)

The thrust of these cases is to the effect that even where a protected interest is involved, a prior hearing is not mandated where the person holding the interest is not subject to "severe detriment" or the person is not "condemned to suffer grievous loss" as a result of government action. Thus, it is only government action directed toward government entitlements or benefits which directly and sharply implicate basic elements of life, liberty or property that will require a prior hearing.

The record of this case does not demonstrate that the involved statute has a devastating impact on any person holding a clearly identified interest within the contemplation of the term "liberty" or "property" such as would necessitate the holding of a prior hearing before the principal could act. The students directly involved in this case all either graduated from school on time or ahead of time, or moved on to the next grade. The point hour ratio they each maintained either remained the same or in some cases slightly improved following the suspensions (A. 125, 133-134, 143, 152-153, 154 and Deft. Ex. B, A. 286)

The pattern of lower federal court decisions that have concerned themselves with questions surrounding the suspension of students essentially demonstrate that those courts, without addressing the question of participation in a particular State system or school, have not been able to find a liberty or property right so sharply implicated as to require a hearing before the principal or school administrator acts, where the suspension is for a

period of from one to ten days. No student is subjected to a severe detriment or condemned to suffer a grievous loss. *Linwood v. Board of Education of Peoria*, 463 F. 2d 763, cert. denied, 409 U.S. 1027 (1927) seven days suspension; *Tate v. Board of Education of Jonesboro, Ark.*, 453 F. 2d 975 (1972) five days suspension; *Dunn v. Tyler Independent School Dist.*, 460 F. 2d 137 (1972) ten day suspension; *Hatter v. Los Angeles City High School District*, 310 F. Supp. 1309 (1970) eight day suspension; *Farrell v. Joel*, 437 F. 2d 160 (1971) ten day suspension;[4] *Banks v. Board of Public Instruction of Dade County*, 314 F. Supp. 285 (1970) ten day suspension.

However, the threshold question with respect to whether or not a recognized right of liberty or property protected by the Constitution is implicated, is not answered through the application of a balancing process to the interests involved. *Roth*, 408 U.S. 564, 571, 33 L. Ed. 2d 548, 557 (1972).[5]

Section 3313.66 of the Ohio Revised Code served a legitimate State function, and as such served as a limitation on the broad inherent power possessed by Appellant's administrators and as a limitation on the stat-

[4] Farrell, 437 F. 2d 160, 162 (1971) probes the question relating to whether or not the federal court should ever have intervened. That question is a worthy one. *Tinker v. Des Moines Community School Dist.*, 393 U.S. 503, 514-515, 21 L. Ed. 2d 731, 742, (1968) concurring opinion of Justice Stewart. *Black Coalition v. Portland School Dist.*, NO. 1, 484 F. 2d 1040, (1973) discusses the issue in terms of short versus long term suspension. In that same vein is *Murray v. West Baton Rouge Parish School Bd.*, 472 F. 2d 438 (1973), both concluding that short term suspensions do not violate the Due Process Clause and do not require a prior hearing.

[5] Compare *Cook v. Carlson*, 364 F. Supp. 24 (1973) where the search was for the function involved, as well as the property interest, with a case like *Givens v. Poe*, 346 F. Supp. 202 (1972) where even though short term suspensions were recognized not to violate the Constitution, the balancing test comes into full play. The internal governmental function involved receives no real consideration. It is only where fundamental rights are sharply implicated that an immediate hearing is required. Even though the instant situation did not involve a fundamental right, relief through several avenues was available. See Section 2506.01 of the Ohio Revised Code.

utory power they possessed by virtue of Section 3313.20 of the Ohio Revised Code.

Leaving aside the pure question of where education, as viewed in a dual context fits or doesn't fit within the framework of the Constitution, it cannot be concluded that a basic right of life, liberty or property is either initially or otherwise drawn in question through the governmental function involved, as regulated by Section 3313.66 of the Ohio Revised Code. Even though welfare standing alone did not fit into the category of recognized fundamental rights protected by the Constitution, the right to life was found to be otherwise sharply implicated when the benefits provided by welfare were terminated. *Dandridge v. Williams,* 397 U.S. 471, 25 L. Ed. 2d 491 (1970) and *Goldberg v. Kelly,* 397 U.S. 254, 25 L. Ed. 2d 287 (1970). A similar comparison analysis applied to the record of the instant case, even though participation in a particular system or school is not guaranteed by the Constitution, does not demonstrate that any other recognized basic right of liberty or property was involved. No student representing the class was condemned to suffer grievous loss of a recognized right. *Rodriguez,* 411 U.S. 1, 36 L. Ed. 2d 16, 44 (1973). At no time did liberty as it relates to "education" in the personal sense discussed in *Meyer v. Nebraska,* 262 U.S. 390, 67 L. Ed. 1042 (1923) and *Pierce v. Society of Sisters of Holy Name,* 268 U.S. 510, 69 L. Ed. 1070 (1925), become involved in this case, either directly or indirectly. This case only involved the school systems internal maintenance of order and discipline. *Steier v. New York Education Commissioner,* 271 F. 2d 13, 18-19 (1959). The evidence presented in this case, does not offer any reason to change such conclusion.

Interests of liberty or property were not terminated or so sharply implicated either initially or at a later time by reason of the action taken as to require a prior hear-

ing. The students' right to acquire useful information was not being terminated. Their free choice right to attend a public or private school was not involved. They had those rights before the suspensions and retained those rights during and after the suspensions. In fact, the involved students in reality proceeded on with their participation in the system graduating or advancing at essentially the same or better point hour ratio than they had previously maintained. (A. 125, 133-134, 143, 152-153, 154 and Deft. Ex. B, A. 286). The function involved was the government's management and control of the internal affairs of a system it had established. The vitality of that function as a legitimate local concern has previously been recognized by this Court. *Epperson v. Arkansas*, 393 U.S. 97, 104, 21 L. Ed. 2d 228, 234 (1968). *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 507, 21 L. Ed. 2d 731, 738 (1968). *Healy v. James*, 408 U.S. 169, 192 (1972). That concept has also received recognition from the Circuit Courts. *Medera v. Board of Education*, 386 F. 2d 778 (1967); *Blackwell v. Issaquena County Board of Education*, 363 F. 2d 749, 753 (1966) and *Tate v. Board of Education*, 453 F. 2d 975, 978 (1972). The District Court clearly recognized that Appellants were performing that function. (Jurisdictional Statement p. 65). That function is best described by this Court in *Cafeteria Workers v. McElroy*, 367 U.S. 886, 896, 6 L. Ed. 2d 1230, 1236. (1961).

> "Moreover the governmental function operating here was not the power to regulate or license, as lawmaker, an entire trade or profession, or to control an entire branch of private business, but, rather, as proprietor, to manage the internal operation of an important federal military establishment."

The instant situation is analogous. Here the State, as proprietor of the system it had established, was acting to preserve order and discipline internally among partici-

pants within that system. Its actions were not directed against the type of entitlement recognized in *Goldberg v. Kelly*, 397 U.S. 254, 25 L. Ed. 2d 287, (1970) *Bell v. Burson*, 402 U.S. 535, 29 L. Ed. 2d 90 (1971) and *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 23 L. Ed. 2d 349 (1969).

The strong statements of this Court and lower federal courts recognizing the comprehensive authority of school administrators, particularly where no other specific area of the Constitution is involved, either directly or indirectly, is nothing more than a traditional recognition that in the area of discipline and control, this Court is faced with an area of action resting exclusively with the States. That recognition is best summarized by Justice Harlan in his dissenting opinion in *Tinker v. Des Moines Community School District*, 393 U.S. 503, 526 L. Ed. 2d 731, 749, (1968):

> "* * * At the same time I am reluctant to believe that there is any disagreement between the majority and myself on the proposition that school officials should be accorded the widest authority in maintaining discipline and good order in their institutions. To translate that proposition into a workable constitutional rule, I would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns — * * *." (See also *Rumler v. Board of Sch. Tr. for Lexington Co. Dist. No. 1*, 327 F. Supp. 729, 743-744, aff'd 437 F. 2d 953 (1971), and the analysis contained therein).

The difficulty in the instant case relates not to the fact that the statute was motivated by improper concerns, but to the fact that the District Court was attempting to perform a function which rests with the State legislative body. The District Court went through

two hearings, and concluded that "the evidence establishes that the various school administrators acted to restore order and discipline in their schools, and found:

> "This holding does not reflect upon the wisdom or propriety of the suspensions themselves. Phillip Fulton's testimony fully supports the suspensions he imposed. ***" (Jurisdictional Statement p. 65),

Such findings are direct evidence that what was involved in this case was not a problem surrounding the Due Process Clause, but whether or not a change should be made in the disciplinary power and practices of the school administrators. That problem should have been directed to the legislature. The burden of demonstrating that the statute was motivated by other than legitimate concerns was not met.

No person involved in this case had a basic right of liberty or property sharply drawn in question; no person was condemned to suffer grievous loss of a basic right of liberty or property.

CONCLUSION

It is respectfully submitted that for the foregoing reasons the judgment of the District Court should be reversed.

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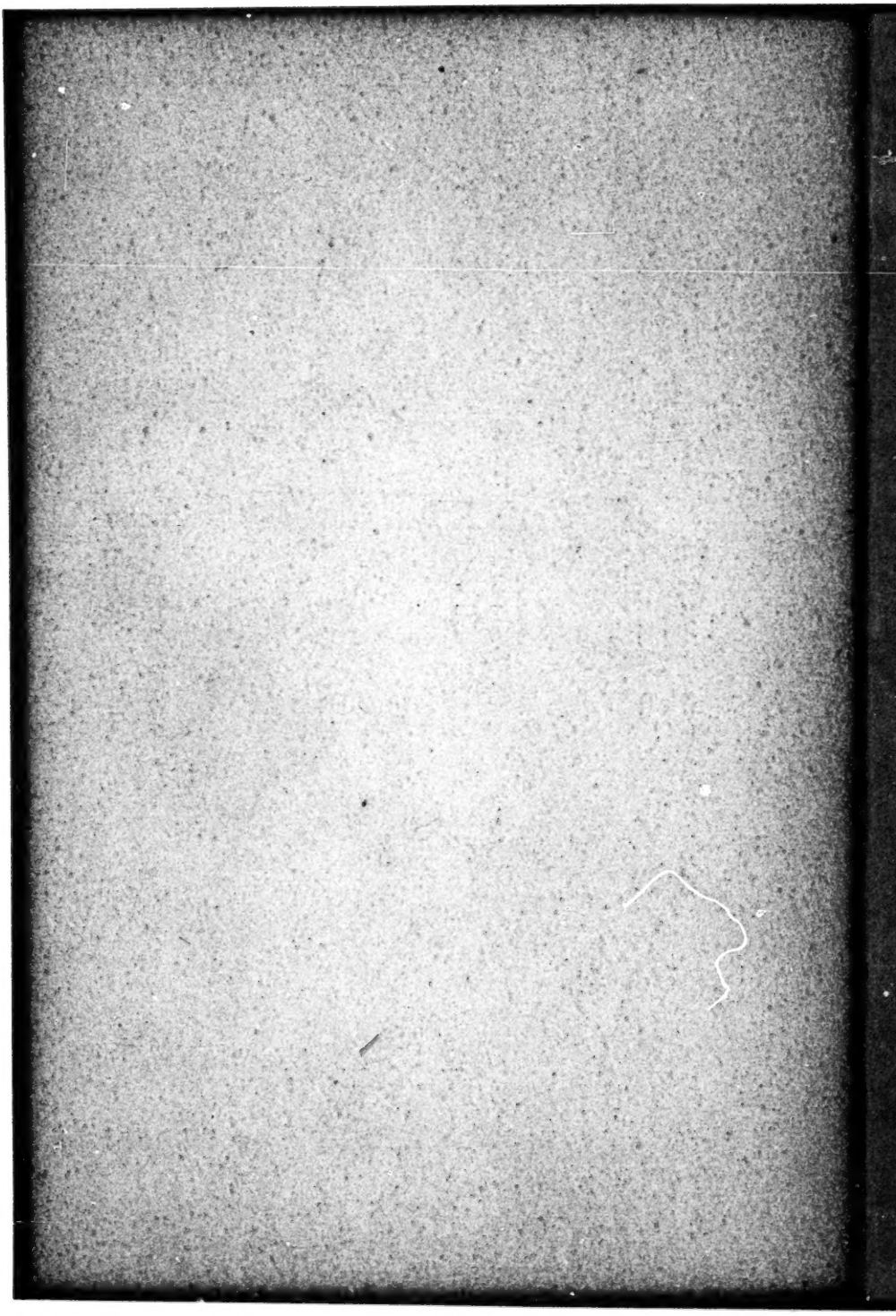

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-[illegible]

NORVAL COSS, et al.,
Appellants

—v—

EILEEN LOPEZ, et al.,
Appellees

On Appeal from a Three-Judge
United States District Court
for the Southern District of Ohio,
Eastern Division

BRIEF BY

The Buckeye Association of School Administrators,
The Ohio Association of Secondary School Principals,
The Ohio Association of Elementary School Principals,
The Ohio Association of School Business Officials,
The Ohio School Superintendents Association,
The Ohio Association of School Curriculum Directors,
The Ohio Congress of School Administration Association,
as *Amici Curiae* in support of the constitutionality
of Ohio Revised Code Section 3313.66

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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, et al.,
Appellants

v.

EILEEN LOPEZ, et al.,
Appellees

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

BRIEF OF AMICI CURIAE

IDENTIFICATION AND PURPOSE OF AMICI CURIAE

Amici Curiae are among those groups and individuals who are professionally committed to the improvement of education in the public schools. They believe that such improvement can come about only through a process of experimentation and innovation involving the utilization of a variety of educational tools. Such experimentation and innovation are not possible in a situation where rigid constitutional formulas have been imposed upon the public schools.

One of the tools utilized in the educational process in Ohio is the short-term disciplinary suspension. The use of such suspensions is a part of education. It is vital both to the maintenance of an orderly process of education for all

who are in attendance in public schools and to the development of a sense of discipline and control in individual students. The importance of this tool is indicated by the following figures: in the Cincinnati School District in the school year 1972-3, there were 4,054 short-term suspensions out of a total student enrollment of 81,007; in the Akron City School District in the school year 1972-3, there were 7,352 short-term suspensions out of a total enrollment of approximately 57,000 students; and in the Cleveland City School District in the school year 1972-3, there were 14,598 short-term suspensions out of a total student enrollment of 142,053. These figures make absolutely clear that a constitutional requirement of a hearing prior to the short-term suspension of every student would render this basic tool unavailable. The time of administrators, teachers, and students consumed in hearings in this number of cases would obviously be enormous.

The importance of the student suspension device to the educational process in Ohio is related to the fact that Ohio's compulsory attendance law applies to students between the ages of 6 and 18 years. This is the longest period required by any state. States where there are fewer older students and different disciplinary problems may well find that the Ohio procedure is unnecessary, unsuitable or even undesirable. It is the position of *Amici Curiae* that such judgments are best left to the administrators, legislators and ultimately to the people of the various states. Only through a flexible process whereby individual states are allowed to utilize a variety of educational tools can the goal of an improved educational process be attained.

DISCUSSION

I. Public Classroom Instruction Is Not An Interest Protected By The United States Constitution.

Appellees were suspended from school under authority of a statute which provided:

> "The superintendent of schools of a city or exempted village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school *for not more than ten days*. Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall *within twenty-four hours* after the time of expulsion or suspension, *notify the parent* or guardian of the child, and the clerk of the board of education in writing *of such* expulsion or *suspension including the reasons therefor*. The pupil or the parent, or guardian, or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended or expelled from any school beyond the current semester. Ohio Revised Code, § 3313.66 (emphasis supplied).

Each suspension was for a period not to exceed ten (10) days. Neither notice nor a hearing was given prior to the suspensions.

Appellees would like the above statute declared unconstitutional. They persuaded the three-judge trial court that education is a "liberty" protected by the Due Process Clause of the Fourteenth Amendment and that a suspension constituted a deprivation from education.

In revelent part, Section I of the Fourteenth Amendment to the United States Constitution declares:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law. . . ."

There is no claim that the Constitution explicitly protects education. Whether the Constitution implicitly

protects education as a "liberty" under the Due Process Clause is the threshold question for this Court. The three-judge trial court concluded education was a "liberty" but in so doing was careful to observe: "The Supreme Court has not resolved the question of whether a student's statutory right to an education is a liberty which is protected by due process of law." (Jurisdictional Statement, p. 55.)

Not every "interest" is entitled to due process. It is only those coming within the Fourteenth Amendment's protection of liberty and property. This Court reiterated this limitation in *Board of Regents of State Colleges* v. *Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed. 2d 548 (1972) where Mr. Justice Stewart declared:

> "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated the right to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite." 408 U.S. at 569-70.

Attendance at public classroom instruction is not a protected interest. This conclusion is reached from a review of this Court's approach to determining the kinds of liberty interests which are entitled to due process protection.

Fourteenth Amendment "liberty" is something more than exemption from physical restraint. Thus, it was established in *Meyer* v. *Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), that a blanket prohibition against the teaching of German constituted an infringement on the teacher's "liberty" to teach and the "liberty" of parents to obtain such teaching. The test suggested by the Court was whether the interest for which protection was sought was a privilege ". . . long recognized at common law as *essential* to the orderly pursuit of happiness by free men." 262 U.S.

at 399 (emphasis supplied). This test was amplified by Mr. Justice Cardozo in *Palko* v. *State of Connecticut*, 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288 (1937). The question to be asked, said the Court, was whether failure to grant due process would violate a *fundamental* principle of liberty which lies at the base of our civil and political institutions: "Does it violate those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions?'" 302 U.S. at 328. More recently in *Poe* v. *Ullman*, 367 U.S. 497, 81 S.Ct. 1752, 6 L.Ed.2d 989, (1960), Mr. Justice Harlan in his dissenting opinion carefully reviewed this Court's thinking with respect to the interests protected by Fourteenth Amendment due process. He concluded that the interests protected are those which are *fundamental*; which belong to the citizens of all free governments.

> "However it is not the particular enumeration of rights in the first eight Amendments which spells out the reach of Fourteenth Amendment due process, but rather, as was suggested in another context long before the adoption of that Amendment, those concepts which are considered to embrace those rights 'which are . . . fundamental; which belong . . . to the citizens of all free governments, '*Corfield* v. *Coryell*, 4 Wash. C.C. 371, 380, for 'the purpose [of securing] which men enter into society,' *Calder* v. *Bull*, 3 Dall. 386, 388." 367 U.S. at 541.

Again in *Duncan* v. *Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed. 2d 491, (1968), this Court reiterated the standard that an interest is not protected unless it is *fundamental*:

> "The question has been asked whether a right is among those ' "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions," ' *Powell* v. *State of Alabama*, 287 U.S. 45, 67 (1932); whether it is '*basic* in our system of jurisprudence,' in re *Oliver*, 333 U.S. 257, 273 (1948);

> and whether it is 'a fundamental right, essential to a fair trial,' *Gideon* v. *Wainright*, 372 U.S. 335, 343-344 (1963); *Malloy* v. *Hogan*, 379 U.S. 1, 6 (1964); *Pointer* v. *State of Texas*, 380 U.S. 400 (1965)." 391 U.S. at 148-49.

Perhaps most recently this "fundamental" or "implicit-in-the-concept-of-ordered-liberty" analysis was followed in *Roe* v. *Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1972) where Mr. Justice Blackmun recognized that the interests protected are only those personal rights "that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty', *Palko* v. *Connecticut*, 302 U.S. 319, 325 (1937) . . . ." 410 U.S. at 152.

Education and the financing thereof were considered by this Court in *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed. 2d 16 (1973). There the District Court's finding "that education is a fundamental right or liberty" was expressly rejected. 411 U.S. at 37. While acknowledging that education is of undisputed importance, Mr. Justice Powell was clear that education is neither explicitly nor implicitly afforded protection by the Constitution:

> "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying that it is implicitly so protected." 411 U.S. at 35.

In arriving at this conclusion, the Court stated one of the basic questions which it had to consider:

> "It is this question—whether education is a fundamental right, in the sense that it is among the rights and liberties protected by the Constitution—which has so consumed the attention of Courts and commentators in recent years." 411 U.S. at 29.

In *Rodriguez* this Court was, of course, faced with questions arising under the Equal Protection Clause. It

nevertheless based its conclusion on precisely the same kind of analysis which this Court has used in determining what interests are protected by the Due Process Clause. Its analysis was directed to the question of whether or not the interest was fundamental, that is, entitled to either explicit or implicit constitutional protection. In agreeing with the majority that it was entitled to neither, Mr. Justice Stewart stated:

> ". . . the Texas system [of financing education] impinges upon no substantive constitutional rights or liberties." 411 U.S. at 62.

The potential significance for due process purposes of this Court's determination that under the Equal Protection Clause education is not a fundamental right explicitly or implicitly protected by the Constitution is underscored by the earlier Supreme Court holding in *Bolling* v. *Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954). There the Court was presented with the question of whether its equal protection analysis in *Brown* v. *Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954) extended to integration of the District of Columbia Schools. The Court concluded that the concept of liberty within the Due Process Clause of the Fifth Amendment was such that an individual was entitled to be free from segregation on the basis of race in public education. In so doing, the Court declared:

> "But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive." 347 U.S. at 499.

Moreover, the analysis of this Court in *Morrisey* v. *Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), parallels that employed in the *Rodriguez* opinion. Mr. Chief Justice Burger stated in *Morrisey*: "The question is not merely the 'weight' of the individual's interest, but whether the nature of the interest is one within the con-

templation of the liberty or property language of the Fourteenth Amendment." 408 U.S. at 471. And Mr. Justice Powell in speaking for the Court in *Rodriguez* declared:

> "Thus the key to discovering whether education is 'fundamental' is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution." *Rodriguez*, 411 U.S. at 33-34.

This Court then, both in *Rodriguez, supra,* and in *Morrissey, supra,* looked to the nature rather than to the importance of the interest in question. Further, this Court's analysis in *Rodriguez, supra,* was directed to the question of whether or not a right to education was entitled to either explicit or implicit constitutional protection. The due process cases discussed above looked to the same question. Explicit protections are those guaranteed by the Bill of Rights. They have been selectively incorporated into the Fourteenth Amendment. Implicit protections are those intrinsic to our concept of ordered liberty. In holding that a right to education is not entitled either to explicit or implicit constitutional protection for purposes of the Equal Protection Clause, this Court in *Rodriguez, supra,* undertook the same analysis and answered the very questions raised in the due process cases. Education is undeniably important. This alone, does not entitle it to Constitutional protection.

II. Suspensions Not To Exceed Ten Days Do Not Interfere With Education And The Absence From Classroom Learning Cannot Be Shown To Constitute A Grievous Loss.

Moreover, if this Court were to conclude that education is a fundamental right entitled to the protection of

the Due Process Clause of the Fourteenth Amendment, the statute under attack does not violate the Constitution. The section of the Ohio Revised Code which appellees would strike down, R.C. § 3313.66, expressly limits the length of a suspension to ten (10) days. It requires that notice of the suspension together with the reasons in support thereof be supplied to the parents within twenty-four (24) hours of the suspension. In short, the legislature has assured that the interruption from classroom learning is minimal.

This Court has recently declared that procedural due process does not apply unless it can be shown the individual is condemned to suffer grievous loss. *Morrissey* v. *Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). In speaking for the Court, Mr. Chief Justice Burger declared:

> "Whether any procedural protections are due depends on the extent to which an individual will be 'condemned to suffer grievous loss.' *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring), quoted in *Goldberg* v. *Kelly*, 397 U.S. 254, 263 (1970)." 408 U.S. at 481.

This language adopted from Mr. Justice Frankfurter's concurring opinion in the *McGrath* case, *supra*, followed his observation that due process is not to be tested by mere abstract generalities. A court must consider all of the relevant interests.

> "The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished — these are some of the considerations that must enter into the judicial judgment." *McGrath*, 341 U.S. at 163.

This consideration of all relevant interests would include a recognition of the need for discipline as a part of any properly functioning educational system. It would recognize, as have Ohio's courts, that discipline is very much a part of the system of education devised by Ohio's legislature. Thus, in the context of a suspension for a long-hair violation of a dress code, it was argued by plaintiffs that discipline is no part of the educational process. *Laucher* v. *Simpson*, 28 Ohio App. 2d 195, 276 N.E. 2d 261 (Ct.App. Knox Co., 1971). Plaintiffs made "... a direct challenge to what they chose to describe as 'discipline for the sake of discipline'...". 28 Ohio App. 2d at 197. The court unequivocally declared:

> "Discipline is indeed a part of the educational process and we so hold.
>
> "Our system of public education, established to equip citizens with the skills they need to stay free under a rule of law must, if it is to succeed, thoroughly inform its students that the liberty and rights of all depend upon the willingness of the individual to discipline himself to respect the rights of others and that he learn to subordinate his individual desires when they conflict with the legitimate interests of others. Disciplined respect for the rights of others is essential to the survival of liberty." 28 Ohio App. 2d 198.

This sentiment was echoed by Mr. Justice Black in his dissent in *Tinker* v. *Des Moines Community School District*, 393 U.S. 503, 524, 89 S.Ct. 733, 741, 21 L.Ed.2d 731, 743 (1969):

> "School discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens. Here a very small number of students have crisply and summarily refused to obey a school order designed to give pupils who want to learn the opportunity to do so. One does not have to be a prophet or the son of a prophet to

know that after the court's holding today, some students in Iowa schools, and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders." 393 U.S. at 525.

Both this Court and Ohio's courts have recognized discipline as educational. In view of the short duration of student suspensions under Ohio law and given the purpose and function of those suspensions, it can hardly be claimed that their effect is to "stigmatize" suspended students (*see Roth, supra*, 408 U.S. at 573). Indeed the very hearing which appellees argue for is more likely to cause stigmatization. An examination of the facts in the case at bar confirms the absence of stigma or adverse effect on the appellees. Each of them went on to graduate with his or her class at a grade point average equal to or better than that possessed at the time of suspension. Accordingly, this Court is not dealing with a state-imposed stigma that can be shown to have had an effect on any specific interest of the appellees, such as an interest in preserving their good names or an interest in not having other opportunities foreclosed. In short, even if this Court were to hold that a student does have a due process right to attend the public schools, that right is not implicated by the Ohio Statute.

III. Student Disruptions Create An Emergency In The Educational Process Requiring A Flexible Response From Teachers And School Administrators.

Pursuing further Mr. Justice Frankfurter's analysis, there are additional reasons for concluding that short-term suspensions do not violate due process. One of these is the burden that would be imposed on administrators, teachers and school districts if they were required to provide notice and a hearing before suspension. Amici have described at the outset of this brief the nature of their interest. (pp. 1-2). In particular, reference was made to more than fourteen thousand (14,000) suspensions in the Cleve-

land City Schools during the 1972-73 school year. Requiring notice and a hearing for each of these suspensions would, for all practical purposes, mean the end to short-term suspensions as a disciplinary tool. As Mr. Justice Black's dissent in *Tinker* v. *Des Moines* wisely observed, the students learning they are entitled to prior notice and a hearing are going to defy their teachers with still greater frequency.

The District Court for the Southern District of Florida was presented with a statute similar to Ohio's and it was argued, as in the case at bar, that the statute was unconstitutional because it did not provide for notice or a hearing prior to suspension. The court assumed without discussion that classroom education was an interest protected by due process. It reasoned that a resolution of whether plaintiffs were denied their constitutional rights required a weighing and contrasting of the gravity of those rights with the interest of the state in maintaining discipline in the educational system. *Banks* v. *Board of Public Instruction of Dade County*, 314 F.Supp. 285 (S.D. Fla. 1970), *vacated*, 401 U.S. 988 (1971), *aff'd per curiam*, 450 F.2d 1103 (5th Cir. 1971). The court's careful consideration of the interests involved is set forth at length:

> "Providing a hearing to a student prior to his suspension for misconduct itself produces a disruptive effect upon the educational process. Consider, for example, misconduct which occurs during class. If the misconduct in the teacher's opinion justifies suspension, it would also seem to require that the student be immediately removed from the room as the teacher must be able to continue the teaching process without undue interference. If a hearing is to be held prior to suspension the teacher must leave the room with the student or leave a later scheduled class in order to offer testimony. Those students who were witness to the misconduct must likewise leave the room or spend class time preparing written statements to be pre-

sented at the hearing. If the teacher leaves the room the class in the meantime must be left either without supervision or under the guidance of one who is ill-prepared or needed elsewhere. In any event the likelihood is that the remaining students would suffer in their pursuit of an education.

"If the misconduct should occur in a common area, such as the cafeteria, the hallways, or a recreation area, it is likely that a number of staff and student witnesses must be called out of class to 'testify' at such prior hearing, thus multiplying the disruptive effect on the educational process. The parents, of course, must be notified of the hearing and told to come to the school immediately to confer with their child and help prepare his 'case.'

"If, on the other hand, both student and teacher remain in class following the incident until a later time, perhaps the end of the school day, the authority of the teacher and the respect in which he is held will suffer. Moreover, allowing the student who has misbehaved to remain in class is certain to have a disruptive effect.

"If the hearing is to be held after school, student witnesses must be kept late to testify and the 'offender' will no doubt be conferring with them throughout the remainder of the day both in and out of class in order to prepare for the hearing. Of course, there is the possibility that the teacher might remain in class and just send the student to the principal to be kept in detention until the hearing. But this alternative would prevent the student from conferring with witnesses and preparing his case. It is apparent that providing public school students with hearing prior to suspension would result in a disruption of the educational process which cannot be permitted." 314 F.Supp. at 291-92.

The opinion of the court in *Banks, supra*, makes clear that the holding of a hearing prior to the suspension of a student will have a disruptive effect regardless of the way in which it is done. If the student is allowed to remain

in the classroom until such time as a hearing can be held, the authority of the teacher will be directly undermined. If the student and teacher, in addition to other students and teachers who may have been witnesses, are directly removed from the classroom for purposes of holding a hearing, the educational process for the remaining students will be delayed until such time as the hearing is completed. These facts underscore the confusion of the trial court in the instant matter: virtually all suspension situations may be characterized as "emergencies" for they interfere with the continuation of the educational process.

For this reason, school suspensions necessarily fall within the "emergency" exception to the rule that a prior hearing should be held where due process interests are implicated (*see Bell* v. *Burson*, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, 29 L.Ed.2d 90, 96 (1971). One case where this exception was applied is *Phillips* v. *Commissioner*, 283 U.S. 589, 515 S.Ct. 608, 75 L.Ed. 1289 (1931). That case involved "the need of the government to promptly secure its revenues" (283 U.S. at 596), and the court concluded that "delay in the judicial determination of property rights is not uncommon where it is essential that governmental needs be *immediately* satisfied." 283 U.S. at 597 (emphasis supplied). As the opinion in *Banks, supra*, so clearly indicates, the importance of removing the disruptive student from the classroom *immediately* cannot be minimized. It is submitted that the interests of schools and students in a continuation of the educational process have an importance at least equal to "the need of the government promptly to secure its revenues."

This is all the more true where, as in the present case, the disruption involves a large number of students affecting the entire school. (In this case, at least 75 students were suspended. See Appellants' Appendix, Vol. 2 of 3, p. 120.) If the school were forced to provide a hearing prior

to the suspension of each student, the only solution available to school officials would be the closing of the schools.

Amici have set forth in Appendix A a number of cases from the federal courts where, without discussion, it is assumed that education is a protected interest under the Due Process Clause and a balancing approach has been employed to determine the absence of need for due process. The balancing approach was also advocated in Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline,* 119 U. Pa. L. Rev. 545, 573-77 (1971).

Moreover, practicality is going to require some form of balancing test. For example, why stop with suspension from classroom teaching? Questions will be raised with respect to the need for notice and a hearing prior to the administration of corporal punishment (*Gonyaw* v. *Gray,* 361 F.Supp. 366 [D.Vt. 1973]), or before the exclusion of students from interscholastic sports (*Kelly* v. *Metropolitan County Bd. of Ed. of Nashville, etc.,* 293 F.Supp. 485 [M.D. Tenn. 1968]), or indeed before a pupil may receive a failing grade (*Connelly* v. *University of Vermont and State Agricultural College,* 244 F.Supp. 156 [D.Vt. 1965]). And if these areas are all entitled to due process protection, why isn't a pupil excluded from art, music and drama courses because the school he attends cannot afford the courses entitled to challenge the decision which excludes him? Why doesn't due process entitle him to show his exclusion is the result of an arbitrarily drawn boundary line, which keeps him from attending a school building in the same district where the courses are taught. It was in part for this reason that Mr. Justice Powell in his concurrence in *Cleveland Board of Education* v. *LaFleur,* ..... U.S. ..... , 94 S.Ct. ..... , 39 L.Ed. 2d 52, 69-70 (1974) declared:

> "School boards, confronted with sensitive and widely variable problems of public education, must be

accorded latitude in the operation of school systems and in the adoption of rules and regulations of general application. E. g., *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 42-43 (1973). A large measure of discretion is essential to the effective discharge of the duties vested in these locals, often elective, governmental units. My concern with the Court's opinion is that, if carried to logical extremes, the emphasis on individualized treatment is at war with this need for discretion. Indeed, stringent insistence on individualized treatment may be quite impractical in a large school district with thousands of teachers."

Likewise, Mr. Justice Black was reluctant to indicate that this Court would inject the federal courts into the public school systems of the various states. *Karr* v. *Schmidt*, 401 U.S. 1201, 91 S.Ct. 592, 27 L.Ed.2d 797 (1971). In pertinent part he stated:

"I refuse to hold for myself that the federal courts have constitutional power to interfere in this way with the public school system operated by the states. And I furthermore refuse to predict that our court will hold they have such power. It is true that we have held that this court does have power under the Fourteenth Amendment to bar state public schools from discriminating against Negro students on account of their race, but we did so by virtue of a direct, positive command in the Fourteenth Amendment, which like the other Civil War Amendments, was primarily designed to outlaw racial discrimination by the states. There is no such direct, positive command about local school rules with reference to the length of hair state school students must have. And I cannot now predict this court will hold that the more or less vague terms of either the Due Process or Equal Protection Clause have robbed the states of their traditionally recognized power to run their school systems in accordance with their own best judgment as to appropriate length of hair for students." 401 U.S. at 1202.

This same reluctance is expressed in *Epperson* v. *Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228, 234 (1968).

Indeed, in *Waugh* v. *Board of Trustees of the University of Mississippi*, 237 U.S. 589, 35 S.Ct. 720, 59 L.Ed. 1131 (1915), students sought the protection of the Fourteenth Amendment for their claimed right to affiliate with a fraternity at an educational institution. A state statute prohibited such fraternities and the court concluded this did not constitute a denial of due process of law. In so doing, the court declared:

> "It is not for us to entertain conjectures in opposition to the views of the State and annul its regulations upon disputable considerations of their wisdom or necessity. Nor can we accommodate the regulations to the assertion of a special purpose by the applying student, varying perhaps with each one and dependent alone upon his promise.
>
> "This being our view of the power of the legislature, we do not enter upon a consideration of the elements of complainant's contention. It is very trite to say that the right to pursue happiness and exercise rights and liberty are subject in some degree to the limitations of the law, and the condition upon which the State of Mississippi offers the complainant free instruction in its University, that while a student there he renounce affiliation with a society which the State considers inimical to discipline, finds no prohibition in the Fourteenth Amendment." 237 U.S. at 597.

The rationale underlying the repeated affirmations by this Court that educational judgments are best left to school officials is based on the expertise of such officials in the education area. Beyond the question of expertise is the need for flexibility in the operation of our public schools. An examination of the statistical breakdown on school suspensions contained in Appendix B underscores

the need for such flexibility. These statistics demonstrate the diversity in age, circumstances, and type of infraction with which school officials must deal. The imposition of a single, constitutionally-mandated procedure would destroy the flexibility needed for dealing with these diverse disciplinary problems. Furthermore, it would preclude the immediate response necessary to prevent the disruption of the educational process.

CONCLUSION

For all of the foregoing reasons *Amici Curiae* respectfully submit that this Court should reverse the judgment of the trial court and enter judgment for appellants upholding the constitutionality of Ohio's suspension statute.

Respectfully submitted,

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Appendix A — The Federal Courts Have In General Upheld The Constitutionality of Short-Term Suspensions Although Neither Prior Notice Nor Prior Hearing Was Provided. Cases Upholding Suspensions Are Set Forth Chronologically From 1969 Through 1973.

— In *Baker* v. *Downey City Board of Education*, 307 F.Supp. 517 (C.D. Cal. 1969), the constitutionality of a California statute under which a student was suspended for a ten-day period was upheld. In accepting this procedure, the court noted:

"Due process is not a fixed, inflexible procedure which must be accorded in every situation. It varies with the circumstances involved. In the instant case, the school officials were charged with the conduct of the educational program and if the temporary suspension of a high school student could not be accomplished without first preparing specifications of charges, giving notice of hearing, and holding a hearing, or any combination of these procedures, the discipline and ordered conduct of the educational program and the moral atmosphere required by good educational standards, would be difficult to maintain." 307 F.Supp. at 522-23.

— In *Hernandez* v. *School District Number One, Denver, Colorado,* 315 F.Supp. 289 (D.Colo. 1970) the constitutionality of a Colorado statute under which a school principal was authorized to suspend a student for a period up to twenty-five days was challenged. The court rejected this challenge and emphasized the rights of the other students in the educational process:

"There is no evidence that the suspension period of twenty-five days is an unreasonable time to allow the principal and superintendent to attempt to resolve problems of discipline and behavior which is inimicable to the welfare, safety, or morals of other pupils, before resorting to expulsion." 315 F.Supp. at 293-94.

— In *Whitfield* v. *Simpson,* 312 F.Supp. 889 (E.D. Ill. 1970), a student was suspended for two seven-day periods and subsequently expelled. The court upheld the constitutionality of the Illinois statute in question, and noted the importance of discipline both to the functioning of the schools and to the development of the individual student:

"While the principle use to which the schools are dedicated is to accommodate students during prescribed hours for certain types of activities, discipline and social behavior are not only an inevitable part of

the process of schooling, they are also an important part of the educational process." 312 F.Supp. at 893.

— In *Banks* v. *Board of Public Instruction of Dade County*, 314 F.Supp. 285 (S.D. Fla. 1970), *vacated*, 401 U.S. 988 (1971), *aff'd per curiam*, 450 F.2d 1103 (5th Cir. 1971), a ten-day suspension was upheld. There was no hearing before the suspension. In pointing to the context in which due process rights were to be applied, the court stated:

> "The right to a hearing, when analyzed within the setting of the public school system, is necessarily subject to limitations imposed in order to insure the orderly administration of education and to preserve both decorum in the classroom and respect for teachers and administrators." 314 F.Supp. at 291.

— In *Farrell* v. *Joel*, 437 F.2d 160 (2d Cir. 1971), the Second Circuit Court of Appeals upheld a ten-day suspension. The court distinguished a suspension for this duration from both a long-term suspension and from an expulsion in ruling that,

> ". . . the nature of the sanction affects the validity of the procedure used in imposing it." 437 F.2d at 162.

— In *Jackson* v. *Hepinstall*, 328 F.Supp. 1104 (N.D.-N.Y. 1971), the constitutionality of a five-day suspension without prior hearing was challenged. Characterizing five days as a "reasonable suspension period," the District Court made reference to the Supreme Court's decision in *Tinker* in

> "affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." 328 F.Supp. at 1107.

— In *Tate* v. *Board of Education of Jonesboro, Ark., Special School District*, 453 F.2d 975 (8th Cir. 1972),

students were suspended for a five-day period for walking out of a pep rally. Subsequent to the suspensions, the students were notified of the causes for their suspensions and were given an opportunity to attend a question and answer period relating to the suspensions. In ruling that this procedure satisfied the requirements of due process, the court considered both the "mildness" of the penalty and the need to relate due process requirements to the "time, place and circumstances" of discipline in the schools.

— In *Linwood* v. *Board of Education, City of Peoria, School District No. 150, Illinois,* 463 F.2d 763 (7th Cir. 1972), *cert. denied,* 409 U.S. 1027 (1972), the Seventh Circuit Court of Appeals upheld the constitutionality of a seven-day suspension. In considering the requirements of the Due Process Clause, the court distinguished a school suspension from a criminal proceeding and from a juvenile delinquency proceeding. The court concluded:

> "We are of the view that a suspension for so relatively a short period for reasonably proscribed conduct is a minor disciplinary penalty which the legislature may elect to treat differently from expulsion or prolonged suspension without violating the constitutional right of the student. . . . Certainly, the imposition of disciplinary measures such as after-school detention, restriction to the classroom during free periods, reprimand, or admonition does not *per se* involve matter rising to the dignity of constitutional magnitude. We conclude that insofar as the requirement of a hearing is concerned it was within the discretion of the lawmakers to equate suspensions of 7 days or less with other minor disciplinary penalties although they did reserve the imposition of this particular sanction to school officials of supervisory status." 463 F.2d at 768-69.

— In *Black Coalition* v. *Portland School District No. 1,* 484 F.2d 1040 (9th Cir. 1973), the Ninth Circuit Court of Appeals sustained the validity of temporary suspensions

ranging from six days to six weeks where no prior hearing was held. In its opinion, the court compares the minimal affect on the individual student of such a suspension with the overriding importance to the educational system of maintaining proper order where it states:

> "Brief suspensions are often justified by the interest of school officials in maintaining an atmosphere conducive to learning. The injury caused to assaultive and disruptive students by brief suspensions is minimal compared to the danger posed to the normal functioning of an educational institution by the continued presence of such students." 484 F.2d at 1044.

Appendix B

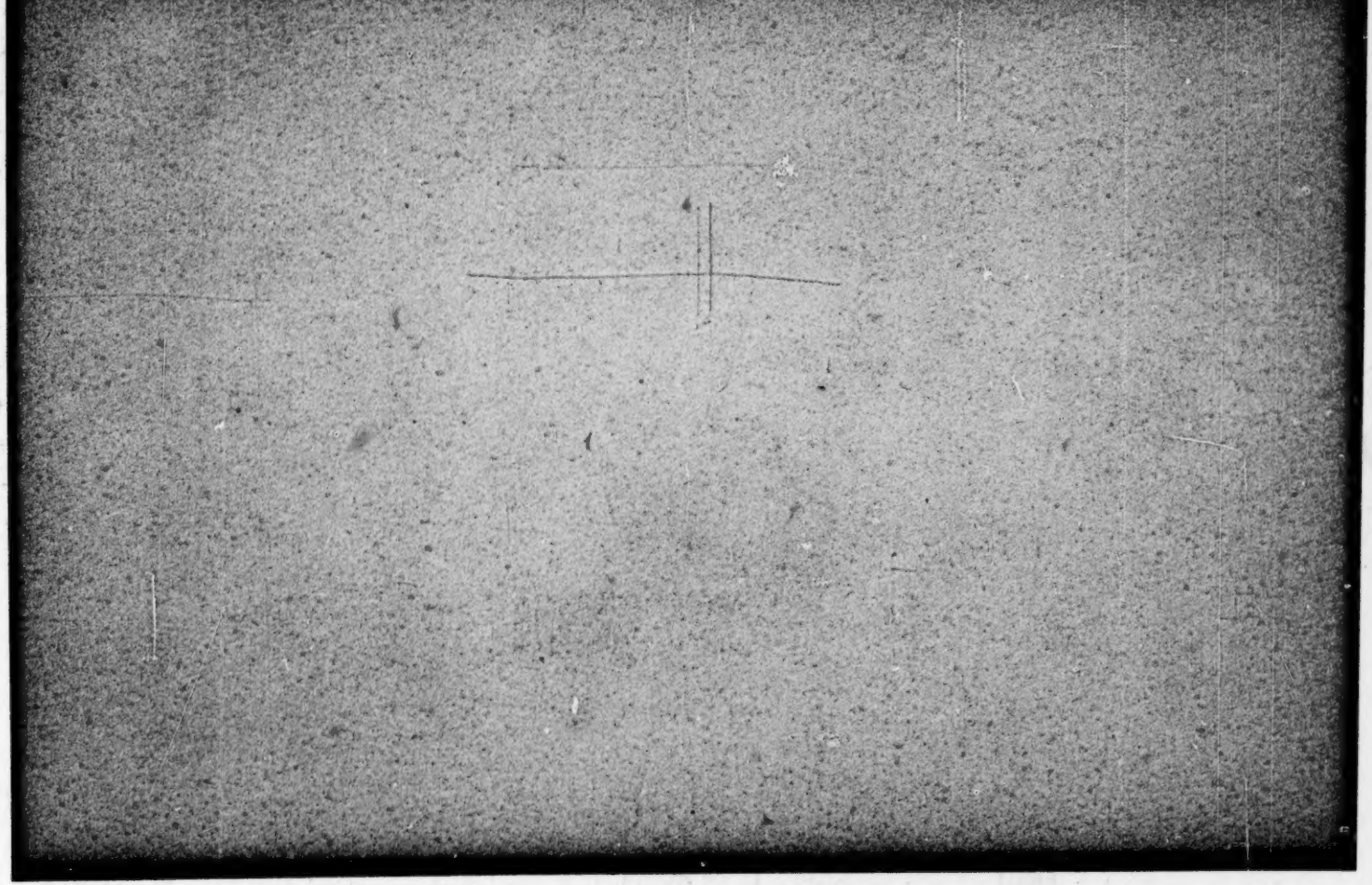
Summary of Suspensions for the School Year 1972-73

For the Cincinnati City School District

LEVEL	SEX			AGE									GRADE						Insubordination	Behavior Problem	Class Cut & Truancy	Assault	Extortion – Theft	Smoking	Fighting	Miscellaneous	Handled By	
	M	F	Total	10	11	12	13	14	15	16	17	18+	7	8	9	10	11	12									School	Center
Senior																												
September	7	7	14					1	3	5	5					9	3	2	4	1	3	1			5		12	2
October	78	39	117					8	30	37	37	5			16	59	30	12	23	1	28	6	1	20	24	14	107	10
November	82	35	117					5	27	48	29	8			17	60	32	8	23	12	29	15	2	6	16	14	103	14
December	105	37	142						40	56	37	9			8	89	25	20	23	31	44	9	1	7	22	5	126	16
January	94	52	146					9	47	47	33	10			28	71	34	13	28	5	64	6	1	6	19	17	130	16
February	76	48	124					5	33	47	28	11			18	67	28	11	30	4	36	2	1	27	12	12	115	9
March	174	54	228					2	43	68	83	32			15	117	48	48	43	5	91	8	1	32	31	17	214	14
April	95	29	124					7	26	36	35	20			16	58	26	24	34	4	38	3	1	9	19	16	116	8
May	104	44	148					5	35	51	44	13			19	81	34	14	35	9	59	4		16	17	8	143	5
June	16	3	19						3	8	4	4				11	5	3	6	3	4	2		2		2	19	
Sub-Total	831	348	1179					42	287	403	335	112			137	622	265	155	249	75	396	56	8	125	165	105	1085	94
Junior																												
September	55	24	79			4	18	32	21	4			16	30	33				16	6	16	9	8	6	14	4	77	2
October	117	69	186		1	20	53	70	38	3	1		60	76	50				40	18	41	23	2	8	47	7	164	22
November	152	71	223		1	34	61	78	41	7	1		78	70	75				31	14	47	26	2	27	65	11	202	21
December	136	112	248			21	80	99	62	6			61	119	68				70	31	53	10	6	19	52	7	224	24
January	181	102	283			31	79	117	49	7			88	115	80				63	26	54	20	1	22	81	16	251	32
February	253	117	370			26	107	144	80	12	1		129	136	105				93	40	51	21	8	45	97	15	343	27
March	238	131	369			35	83	124	97	28	2		113	128	128				90	38	75	27	3	40	75	21	348	21
May	160	89	249			23	58	97	56	14	1		81	99	69				64	27	49	18	1	27	53	10	236	13
April	266	144	410			23	77	148	112	46	4		104	152	154				104	38	92	26	12	47	66	25	380	30
June	66	46	112			1	23	41	36	10	1		18	56	38				31	7	34	11	1	8	7	13	112	
Sub-Total	1624	905	2529		2	218	639	930	592	137	11		748	981	800				602	245	512	191	44	249	557	129	2337	192
Total	2455	1253	3708		2	218	639	972	879	540	346	112	748	981	937	622	265	155	851	320	908	247	52	374	722	234	3422	286

LEVEL	SEX			AGE									GRADE						Insubordination	Behavior Problem	Class Cut & Truancy	Assault	Extortion – Theft	Smoking	Fighting	Miscellaneous	Handled By	
	M	F	Total	10	11	12	13	14	15	16	17	18+	7	8	9	10	11	12									School	Center
				5	6	7	8	9	10	11	12	13+	1	2	3	4	5	6										
Elementary																												
September	5	1	6						3	2	1					1	2	3	1	3					2		1	5
October	24	2	26		1		3	1	6	6	9		1		3	2	8	12	5	11	5	4			1		2	24
November	28	3	31		2		3	4	6	11	5		2	2	4	4	5	14	4	17	2	5	1		2		13	18
December	18	4	22				2	1	5	8	5	1		1	2		9	10	8	6	1	3		1	3		13	9
January	25	3	28			2	3	5	2	5	9	2		3	3	5	4	13	7	13		4			3	1	8	20
February	23	8	31		1	1	1	2	6	12	7	1	2		1	2	19	7	3	10		3	2		10	3	12	19
March	29	18	47		1	1	1	4	4	11	21	4	2	1	2	3	14	25	9	13		8	1	1	10	5	20	27
April	34	12	46			2		3	10	15	13	3	2		1	5	16	22	6	14	2	9			11	4	27	19
May	45	14	59	1		1	1	3	6	15	23	9	1	2	4	5	15	32	13	27	2	7			10		27	32
June	24	7	31			3		4	3	6	7	8	2	1	3	2	9	14	7	10		7			6	1	23	8
Total	255	72	327	1	5	10	14	27	51	91	100	28	12	10	23	29	101	152	63	124	12	50	4	2	58	14	146	181
Special																												
September			0																									
October	5		5									5						5	3			2					1	4
November	4		4									4						4	2	2								4
December	2		2									2						2		1					1			2
January			0																									
February			0																									
March	2	2	4									4						4	1	2		1					1	3
April	1		1									1						1		1								1
May	2	1	3									3						3		1	1	1					1	2
June			0																									
Total	16	3	19									19						19	6	7	1	4			1		3	16
Grand Total	2726	1328	4054	1	7	228	653	999	930	631	446	159	760	991	860	651	366	326	920	451	921	301	56	376	781	248	3571	483

Statistics compiled by the Cincinnati City School District, Pupil Adjustment Branch, on the basis of suspension notices received by the Clerk-Treasurer of the School District.



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In the

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-836

NORVAL GOSS, et al.,
APPELLANTS,

v.

EILEEN LOPEZ, etc., et al.,
APPELLEES.

ON APPEAL FROM A THREE JUDGE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

APPELLEES' BRIEF ON THE MERITS

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In the
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OCTOBER TERM, 1973

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ON APPEAL FROM A THREE JUDGE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

APPELLEES' BRIEF ON THE MERITS

Opinion Below

The opinion filed by the District Court has not, as yet, been reported. A copy of the Order and Opinion is reprinted in Appellees' Motion To Affirm as Appendix A.

Statutes Involved

A. Section 3313.66 of the Ohio Revised Code:

> The superintendent of schools of a city or exempt village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. Such superintendent or executive head may expel a pupil from school. Such superintendent, executive head, or principal shall within twenty-four hours after the time of expulsion or suspension notify the parent or guardian of the child, and the clerk of the board of education in writing of such expulsion or suspension including the reasons therefor. The pupil or the parent or guardian or custodian of a pupil so expelled may appeal such action to the board of education at any meeting of the board and shall be permitted to be heard against the expulsion. At the request of the pupil, or his parent, guardian, custodian, or attorney, the board may act upon the expulsion only at a public meeting. The board may hold the hearing in executive session but may act upon the expulsion only at a public meeting. The board may, by a majority vote of its full membership, reinstate such pupil. No pupil shall be suspended beyond the current semester.

B. Section 1010.04 Administrative Guide, Columbus Public Schools:

> 1010.04 — Pupils may be suspended or expelled from school in accordance with the provisions of Section 3313.66 of the Revised Code.

C. The Fourteenth Amendment to the United States Constitution, Section 1, which states, in relevant part:

> —Nor shall any state deprive any person of life, liberty or property without due process of law—

Question Presented

Was the Court below incorrect when it held that the exclusion of Ohio students from school for up to ten (10) days without *any* form of fact-finding hearing was a violation of the Due Process guarantees of the Fourteenth Amendment to the United States Constitution?

Statement of the Case

In the Spring of 1971, during a period of heightened racial consciousness, several schools in the Columbus, Ohio School System were affected by racial confrontation, demonstrations and problems of various sorts. Some school officials responded by issuing blanket suspensions to all identifiable students at a given time or place.[1] Many of these students were innocent victims of these sweeping suspensions,[2] having merely been guilty of being in the wrong place at the wrong time.[3] Since the Ohio Law and the Columbus Regulations failed to provide for any procedural safeguards for these students, they had no

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[1] Although the Appellees (hereinafter students) never were certain of the exact number of children suspended, one indication is given by the testimony of Dwight Lopez, referred to in the Court's Opinion. (Motion To Affirm, p. 20). Lopez testified that he personally knew more than seventy-five students suspended from one school. (Central High School) on one given day. (Appendix, p. 120).

[2] See, e.g., the testimony of the students who testified at the trial. (Appendix, pp. 119-54).

[3] Typical of this syndrome is the testimony of Dwight Lopez and Betty Jane Crome. (Appendix, pp. 119-37).

forum to protest their innocence.[4] The result was resort to the courts in the form of this present action.

The students filed suit alleging that their suspensions violated the Procedural Due Process requirements of the Fourteenth Amendment to the United States Constitution. More specifically it was alleged that 42 U.S.C. 1983 was violated. Nine named Plaintiffs sued on behalf of a class of Columbus school students who had been suspended in a like manner. Section 3313.66 was challenged directly because it was manifest that in the absence of the statute, no authority existed to exclude children from school,[5] that the statute specifically permited suspensions without any hearing and expulsions without any prior hearings, and that in fact, the statute was relied upon by the Columbus school officials.[6] The students sought a declaration of the section's unconstitutionality, an injunction against its enforcement, and expungement of any reference to the suspensions contained in school files.

The Court, after trial, declared Section 3313.66 and Columbus Regulations in effect at the time of the suspensions unconstitutional on the grounds that they failed to provide for a hearing prior to suspension. The Court further ordered expungement as requested. It is this decision which is presently being appealed.

Although this is a class action challenging an institutional practice embodied in a law and a regulation, it is

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[4] Some students did have subsequent conferences, (usually ten (10) days or more after the termination of schooling) which were held not to elicit the truth but to determine future goals and placement. (Appendix, p. 114).

[5] See, e.g., § 3313.64 of the Ohio Revised Code which mandates a free education for each child between the ages of 6 and 21, and § 3321.01 which prescribes compulsory education.

[6] See, e.g., § 1010.04 of the Administrative Guide to the Columbus Public Schools set out in the "Statutes Involved" Section of this Brief.

thought useful to outline briefly the facts surrounding the suspensions of the named Plaintiffs who testified.[7] These facts are offered in order to provide the Court with a better picture of how the law operates. A summary of the facts surrounding the suspensions of four of the named Plaintiffs demonstrates the arbitrariness which the statutes and regulations sanction.

Dwight Lopez testified that on February 26, 1971 he was sitting in the school lunch room at Central High School when some other students entered and started overturning tables.[8] Apparently he was mistaken for a participant, for that afternoon he received a phone call from the school principal informing him that he was suspended and should not return to classes. A letter was also sent that day informing Dwight's parents that Dwight was suspended, that they should keep him home, and that a "conference" would be arranged (at an unspecified time) to determine "what the problems may be." Another letter was mailed

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[7] Four of the original nine representative Plaintiffs testified. It was not felt necessary to present the testimony of all since this case involves an unquestioned practice of suspending students for up to ten (10) days without any hearing; once that was established the major issue of Constitutional propriety was raised; it should also be noted that some of the Plaintiffs had disappeared during the two and one half years between the filing of the Complaint and the trial. Finally, a statement contained in Appellants' Brief should be clarified. On page 3 of Appellants' Brief on The Merits it is asserted that four of the nine were above the age of compulsory attendance. It is true that four were above the age of eighteen, the age set for mandatory attendance. (ORS 3321.01). However, all were below the age of twenty-one. Under Ohio Law (ORS 3313.64) children under the age of twenty-one are entitled to a free public education.

[8] Dwight's testimony from which this summary is extracted is found in the Appendix at pp. 119-31. The letters referred to are Plaintiffs' Exhibits 1A through 1D and appear in the Appendix at pp. 120-25 and 190-93. The exhibits of the Plaintiffs and Defendants contained at pages 191-286 were admitted into evidence by oral stipulation at the beginning of the trial. The Transcript, however, does not record this stipulation. Thus the point at which some exhibits were formally introduced into evidence is not recorded.

on March 1, similar to the first, which directed that Dwight should remain at home and that a conference would, at some unspecified time, be arranged. On March 5 a letter was mailed to the parents informing them that a conference was set for March 8. On March 8 there were demonstrations outside the building scheduled for the "conference" which prevented its being held. Dwight testified that despite attempts by his sister to set another conference, none was ever held. By letter dated March 24, the District informed Dwight that he was to be transferred to "Adult Day School," although he had not requested this.

Dwight was out of school almost one month before receiving permission to return. Dwight testified that he lost credit, was treated as a trouble maker at his new school and was unable to make up his courses as a result of the suspension and transfer.[9] None of his testimony, including his assertion of innocence of any wrongdoing, was ever refuted. No hearing at any time was ever offered or held.

Betty Jane Crome was attending McGuffey Junior High School on March 3, 1971.[10] During the morning of that day, the principal decided to close the school due to disturbances. Betty had nothing to do with the disturbances. On her way home Betty had to pass Linden McKinley Senior High School. Demonstrations were taking place, and Betty stopped to watch. While there, the police swept in and picked up all students who were in the vicinity. Betty was among them. After taking her to the Police Station, the police called Betty's home and told her guardian to pick her up. No charges were ever filed. At the suggestion of the police, the guardian telephoned the

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[9] Appendix, pp. 122-26.

[10] The testimony of Betty Jane from which this statement derives is found at pp. 131-37 of the Appendix. The letter referred to is Plaintiffs' Exhibit 2A and is located at pp. 131 and 202 of the Appendix.

school to find out if Betty was suspended. The guardian was told that she was, and a letter confirming that fact was received. The letter indicated that Betty was suspended until March 8 when a "conference" would be held. On March 8 Betty returned to school. This testimony was unrefuted. No hearing to determine the merits of the suspension was ever offered or held. It is worth noting that Betty's "activities" were unrelated to the school she was attending and could not even arguably have prompted an "emergency" suspension.

Deborah Fox was attending Marion-Franklin High School on March 10, 1971.[11] On that day, during the course of some demonstrations, Deborah was suspended from school for a ten (10) day period (until March 19). A letter confirming the suspension was mailed on the same day. No hearing or conference was ever offered or held. On March 19 when Deborah attempted to return to school she was informed that she was suspended for another ten (10) day period. A letter confirming this fact was mailed that same day.[12] Finally by letter of March 23, Deborah was informed that she was to be transferred to South High School. No hearing or conference either preceded or followed either the second suspension or the transfer. Deborah testified that she received zeros for work missed, and that

[11] The Statement of Facts concerning Deborah Fox is abbreviated because there is testimony by the school principal which controverts that of Deborah. Nevertheless the central fact remains: the student maintains that she engaged in no wrongdoing, but was afforded no opportunity to establish her contention. For Deborah's testimony, see pp. 147-54 of the Appendix. Refutation is provided by the school principal. See p. 102 *et seq.* of the Appendix. Letters referred to are Plaintiffs' Exhibits 3A, 3B and 3C found at pp. 151 and 211 *et seq.* of the Appendix.

[12] Deborah testified that she did nothing on March 19, but merely was told upon her return that her suspension was to continue. The principal maintained that she had been "disruptive." The letter is unusually silent about the reason for the second suspension. (Plaintiffs' Exhibit 3B, Appendix, pp. 151 and 212).

she had difficulty adjusting to her classes upon her return. (Appendix, pp. 152-53). She also had a permanent notation inserted in her file concerning the suspension. (Appendix, p. 219).

Susan Cooper was suspended from Marion-Franklin High School on March 15, 1971 for a period of ten (10) days.[13] Demonstrations had taken place and Susan was alleged to have been involved. A letter confirming the suspension was mailed to Susan's mother on March 16, setting up a "conference" for March 25, the day scheduled for Susan's return. Susan was out of school for ten (10) days. No hearings or conference designed to elicit the truth was held at any time—either before or after the suspension. Susan testified that she fell behind in her school work, receiving zeros for work missed and was given no opportunity to make up the work. (Appendix, pp. 143 and 147).

The treatment accorded these students is typical with regard to hearings.[14] No hearing or conference designed to elicit the truth of the charges supporting a suspension is given to a student. To the extent that any protestation of innocence is permitted,[15] the institutional practice is

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[13] Like Deborah Fox, the testimony of Susan Cooper is controverted by the principal of Marion-Franklin and thus no useful purpose is served by a review of the facts. The same central controlling fact as found in the Deborah Fox story remains: there is a major dispute about the truth, but the student was given no opportunity to contest the suspension. Susan's testimony is to be found at pp. 137-47 of the Appendix; refuting testimony is found at p. 110 *et seq.* of the Appendix. The letter referred to is Plaintiffs' Exhibit 4A and is found at pp. 142 and 224 of the Appendix.

[14] See testimony of John Fulton at pp. 111-14 of the Appendix. See, also the testimony of Norval Goss at pp. 163-71 of the Appendix.

[15] The student is usually sent to the principal or vice-principal to be informed of his suspension. Although this is merely a step in the suspension process and not viewed as a truth ascertaining procedure, sometimes a teacher might be called in if the student convincingly attracts the attention of the principal. This process is strictly *ad hoc*. (Appendix, pp. 111-14 and pp. 167-71).

to grant an irrebuttable presumption of truthfulness to the person opposing the student.[16]

The record then seems clear. No hearing is given either prior or subsequent to a suspension. A suspension frequently develops into a longer term exclusion or transfer. It is also clear under the statute in question that no hearing precedes an expulsion. Further, the named Plaintiffs, in varying degrees, showed manifestations of the harms associated with exclusion from school. (see *infra*, p. 33 *et seq.*). Certainly, as Appellants note, all named Plaintiffs graduated. Yet, even by their own exhibit (Appendix, p. 286), six of the eight students who were in school the previous year finished the 1970-71 school year with fewer credits than the previous year, and two, Dwight Lopez and Carl Smith, lost substantial credits. It is notable that three of the nine named Plaintiffs had permanent entries in their records concerning the suspensions. (Appendix, p. 219, Deborah Fox; Appendix, p. 244, Rudolph Sutton; Appendix, p. 256, Tyrone Washington).

Summary of Argument

A. Under this Court's rulings there can be no dispute that education in Ohio is a protected interest entitled to the safeguards of the Due Process Clause of the Fourteenth Amendment. Several decisions have held education to be a protected "liberty", e.g., *Meyer* v. *Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 626 (1923); *Bolling* v. *Sharpe*, 347 U.S. 497, 74 S.Ct. 693 (1954). Given the existence of Ohio legislation establishing the right to education in that state, e.g., Ohio Revised Code, Sections 3313.48, 3313.64 and 3321.01, there can be no question that education is also a protected "property" interest within the meaning of *Board of Regents of State College* v. *Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972).

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[16] See testimony of John Fulton. (Appendix, p. 113).

B. Suspension from school is state action which stigmatizes a child as a trouble maker and damages his reputation. Such a stigmatization requires Due Process protection. *Wisconsin* v. *Constantineau,* 400 U.S. 433, 91 S.Ct. 507 (1971).

C. Deprivation of a protected interest or state action causing stigmatization requires some form of appropriate prior hearing, absent an emergency situation. *Goldberg* v. *Kelly,* 397 U.S. 254, 90 S.Ct. 1011 (1970); *Wisconsin* v. *Constantineau, supra*; *Board of Regents of State College* v. *Roth, supra.* Even if an emergency exists, Due Process requires a subsequent hearing. *Ewing* v. *Mytinger & Casselberry, Inc.,* 339 U.S. 594, 70 S.Ct. 870 (1950).

D. There is a high probability that substantial harm will result whenever a child is excluded, through suspension, from this important interest of receiving an education. The obvious loss through deprivation of education coupled with the substantial probability of collateral consequences meets that quantum of harm required to invoke the Due Process clause. *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337, 342, 89 S.Ct. 1820, 1823 (1969) (Harlan concurring); *Fuentes* v. *Shevin,* 407 U.S. 67, 90, 92 S.Ct. 1983, 1999 (1972); and *Board of Regents of State College* v. *Roth, supra.* Further, as the District Court correctly recognized, the severity of the deprivation merely goes to consideration of the form of the hearing and not to whether the "root requirement" of a prior hearing should or should not be met. *Roth, supra*; *Goldberg, supra.*

E. The Ohio legislation declared unconstitutional by the District Court, which provides that a student may be suspended without any hearing and may be expelled without a prior hearing, violates the above-stated precepts of law. Ohio Revised Code, Section 3313.66 and Section 1010.04 of the Administrative Guide of the Columbus Public Schools.

Argument

The students urge this Court to keep in mind several points while considering the arguments advanced herein. First, this case does not directly involve what form of hearing should be prescribed in the case of a suspension. Under this statute and the Columbus regulations, *no* hearing is given either prior or subsequent to a suspension. Thus, the primary issue is whether the Appellees (hereinafter "students") can be deprived of an education, through suspension, without any hearing. Secondly, although the facts surrounding some of the named Plaintiff students might fit within an "emergency" exception to the prior hearing rule, no subsequent hearing was ever offered or given to them. Surely in an emergency situation when nerves might be on edge, and the chance for mistaken or capricious action is heightened, the need for procedural protections becomes that much greater.

I. Education in Ohio Is a Protected Interest Within the Meaning of the Due Process Clause.

In *Board of Regents of State College* v. *Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972), this Court ruled that one must have a "liberty" interest or a "property" interest in order to invoke Due Process protection. Both reason and this Court's precedents support a holding that education in Ohio satisfies the criterion for each of these interests.

In *Meyer* v. *Nebraska*, 262 U.S. 390, 43 S.Ct. 625 (1923) this Court, in an often cited passage, defined "liberty" as follows:

> While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included

> things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, *to acquire useful knowledge,* to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. 262 U.S. at 399 (emphasis added).

In *Pierce* v. *Society of Sisters of the Holy Names,* 268 U.S. 510, 45 S.Ct. 571 (1925), this Court reiterated that education is a liberty within the meaning of the Due Process Clause. In *Bolling* v. *Sharpe,* 347 U.S. 497, 499, 74 S.Ct. 693, 694 (1954), this Court again held that education was a liberty subject to Due Process protection. Moreover, this Court affirmed this important principle only a year ago in *Roth,* when it quoted approvingly the above-stated definition of liberty from *Meyer.* 408 U.S. at 572. Thus this Court has been consistent in following its acknowledgment in *Meyer* that the "liberty" of the Due Process Clause, at the very least, includes the right to education.

The District, in its Brief on The Merits, tortuously attempts to explain away this line of decisions. It argues that the "liberty" of these cases is a liberty to be free of public education; therefore, the argument goes, a deprivation of public education can not be perceived to be the deprivation of a liberty subject to Due Process protections. To carry this argument to its logical conclusion, the District is forced to argue that even an expulsion need not be protected by Due Process since it is mere exclusion from a non-liberty. (Appellants' Brief, p. 7). This argument falls of its own weight. First, this argument runs counter to every case that has decided this issue, including those

cited by the District. The legal dispute in the lower court cases has been whether a short term suspension requires stringent protections, and not, whether education is a protected interest; all courts have either ruled or assumed that it was. See e.g., *General Order on Judicial Standards of Procedure & Substance in Review of Student Discipline in Tax Supported Institutions of Higher Learning,* 45 F.R.D. 133 (W.D. Mo. *en banc* 1968).

Second, to argue that the only educational "liberty" protected by the Constitution is the right to seek an education outside the public schools is to make "liberty" a frail gossamer. Financial limitations would prohibit the great majority of citizens from enjoying this notion of educational "liberty." And, indeed, it seems likely that it was recognition of this fact in part that prompted Ohio to provide for the free education of its youth. ORS 3313.48. To limit the educational freedom protected by the Constitution solely to private searches for knowledge is to rob public education of its heretofore vital and prominent role in our society. It undermines and denegrates this Court's consistent view of public education's vital role expressed so fully in *Brown* v. *Board of Education,* 347 U.S. 483 (1954), and reiterated recently in *San Antonio Independent School District* v. *Rodriguez.* 411 U.S. 1, 93 S.Ct. 1278 (1973). This suggestion by the defendant District is not only an inaccurate view of the law. It is a dangerous inroad on an important protected interest which has long been granted special constitutional protection by this Court.

The right to education in Ohio must be considered to be a "property," as well as a "liberty," interest, subject to Due Process Protection.[17] In *Board of Regents of State*

[17] The Appellants assert that the District Court "recognized that education is not a property right." (Appellants' Brief, p. 3). This is not an accurate portrayal of the District Court's holding. Although

College v. *Roth*, 408 U.S. 564, 577, this Court ruled that property interests may be derived from statutory entitlements. The Ohio students' right to this vital interest of education is a long and well established entitlement.

A student's right to education in Ohio and the concomitant duty of the state to provide schooling goes back to the origins of that state. The Northwest Ordinance of 1787, which first established a government in that area known today as Ohio, provided in Article Three that "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

The Constitution of Ohio of 1802 in Section Twenty-five (25) of the Bill of Rights provided that equal participation of students should be permitted in schools funded by the United States,[18] and that "all doors of the said schools, academies and universities shall be opened for the reception of schools, students and teachers of every accord...."

The Constitution of 1851, Section Seven (7) of the Bill of Rights, declared "religion, morality and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws.... To encourage schools and the means of instruction."

The present Constitution likewise provides that the General Assembly must pass laws to encourage schools and the means of instruction and must provide through taxation for a "thorough and even system of common schools throughout the state of Ohio." (Art. VI, § 2).

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the Court characterized education as a liberty, it noted that statutory entitlements such as education often take on the incidents of property, citing Reich, *The New Property*, 73 Yale L.J. 733 (1964). (see Motion To Affirm, p. 54, n. 16). The District Court further took notice of the Ohio students' statutory right to an education in discussing the liberty interest. (Motion To Affirm, p. 52, n. 14).

[18] Presumably at that early date schools were primarily funded by the United States.

Present legislation, passed pursuant to these constitutional provisions, clearly imposes a duty on local communities to provide for the education of those children residing therein. Section 3313.48 states:

> The board of education of each city, exempted village, local and joint vocational school district shall provide for the free education of the youth of school age within the district under its jurisdiction...

Section 3313.64 states, *inter alia*:

> The schools of each city, exempted village or local school District shall be free to all school residents between six and twenty-one years of age...

Not only is there a duty to provide free schooling for the children of Ohio (and, of course, a concomitant right for them to attend), but, as in most states, children are mandated by law to attend. Section 3321.01 *et seq.* of the Ohio Revised Statutes provides that all children between the ages of six and eighteen years of age must attend school and that certain penalties result from non-attendance. In fact, this requirement is considered of such magnitude that in certain instances a parent may be required to post a bond to insure that his child attends school. ORS 3321.48. The state courts have further held that under the Ohio statutory scheme there is not only the right of a child to attend school, but that if poverty interferes with the ability to exercise that right, the public must assume the burden of overcoming this barrier. *Dornette* v. *Allais*, 76 Ohio App. 345, 363-64, 63 N.E.2d, 805, 813 (1945). See also *State* v. *Gans*, 168 Ohio St. 174, 151 N.E.2d, 709 (1958).

In sum, Section 33 of the Ohio Revised Statutes broadly establishes a state-wide mandated system of education.

The clear and unequivocal purpose of this legislation is to insure that the children of the state have the opportunity to grow and develop into contributing members of society. To that end, the legislation insures their right to an education. It is precisely upon such a statutory entitlement that "property" rights for Due Process purposes have been and should be built. To allow school officials to deprive children of this statutory entitlement without some form of procedural protection is to invite mistaken, capricious or arbitrary action in clear conflict with the concept of entitlement.

In *Board of Regents of State College* v. *Roth*, 408 U.S. 564, 92 S.Ct. 2701 (1972), this Court specified how a property interest may be ascertained. This Court stated:

> Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. Thus the welfare recipients in *Goldberg* v. *Kelly, supra*, had a claim of entitlement to welfare payments that was grounded in the statute defining eligibility for them. The recipients had not yet shown that they were, in fact, within the statutory terms of eligibility. But we held that they had a right to a hearing at which they might attempt to do so. 408 U.S. at 577.

The claim of entitlement by those welfare recipients in *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S.Ct. 1011 (1970), was surely no stronger than the claim of these students to the right to attend school.

In *Bell* v. *Burson*, 402 U.S. 533, 91 S.Ct. 1586 (1971), this Court ruled that a driver's license could not be revoked without a prior hearing. As this Court stated:

> Relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege." 402 U.S. at 559.

Again, the entitlement to a driver's license in Georgia was no greater than the entitlement of these students to education in Ohio; and surely the extensive and historical statutory scheme devised to insure the education of Ohio youth is far stronger than the "understanding" found to constitute the basis of an entitlement in *Perry* v. *Sinderman*. 408 U.S. 593, 599, 92 S.Ct. 2694, 2699 (1972).[19]

The plurality holding in *Arnett* v. *Kennedy*, 42 U.S.L.W. 4513 (1974) is based upon factors which are not present in the instant case. In *Arnett*, the plurality held that where the legislative grant of an establishment is inextricably intertwined with the procedures for denying the entitlement, one cannot take the grant without also accepting the procedures. In *Arnett*, such entitlement resulted from the fact that the entitlement and the procedures were simultaneously conferred in the same sentence. (See discussion, 42 U.S.L.W. 4518). Historically, no entitlement preceded development of the procedures. The facts in the present case are starkly different. As outlined *supra*, p. 14, the right to education in Ohio historically dates to the Northwest Ordinance of 1787, was preserved and strength-

[19] See also, *Goldsmith* v. *United States Board of Tax Appeals*, 270 U.S. 117, 46 S.Ct. 215 (1926) (Right to Practice Law); *Sherbert* v. *Verner*, 374 U.S. 398, 83 S.Ct. 1790 (1963) (Right to Unemployment Compensation), holding entitlements to be subject to Due Process Protection.

ened by early constitutions, and is encompassed in the present Ohio Constitution. The constitutional right to an education in Ohio is made explicit by the whole legislative scheme found in Section 33 of the Ohio Revised Statutes and particularly by ORS 3313.48, 3313.64, and 3321.01. Section 3313.06 ORS, the Section under attack, stands alone, and does nothing more than prescribe disciplinary procedures. Thus the facts of the instant case are vastly different from those in *Arnett* where the entitlement and the procedures were adopted simultaneously in one sentence.

The statutory right to education in Ohio is thus much better established, both as it presently exists and in its historical antecedents than most of the other entitlements that this Court has designated property interests. In the same sense as welfare is to the welfare recipient, and a driver's license to the driver, education to the Ohio child is "essential(ly) fully deserved and in no sense a form of charity."[20] To allow mistaken, arbitrary or capricious deprivations of education without any form of procedural protection would defy logic.

The Appellants (hereinafter "District") have argued that this Court's ruling in *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278 (1973), somehow undercuts the assertion that a student's right to education is a protected interest within the meaning of the Due Process Clause. This analysis would contradict this Court's statement in *Rodriguez* that:

> Nothing this Court holds today in any way detracts from our historic dedication to public education. 411 U.S. at 30.

It further ignores the difference between "protected interests" as enunciated in the Due Process cases and

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[20] Reich, Individual Rights & Social Welfare: The Emerging Legal Issues, 74 Yale L.J. 1245, 1255 (1964).

"fundamental interests," an equal protection concept. As this Court has made clear, a protected interest may spring from other than a constitutional nexus whereas a "fundamental interest," giving rise to strict equal protection scrutiny, emanates *from* the Constitution. A protected interest receives Due Process protections, when, as is the case of education in Ohio, it is a statutory entitlement, or when as here, reputation and opportunities are limited by state action. This argument of the District also runs counter to several express statements made in the *Roth* and *Rodriguez* decisions.

Previously we discussed this Court's rulings that a property interest may arise from a statutory entitlement. Indeed, in *Board of Regents of State College* v. *Roth, supra,* 408 U.S. 564, 577, this Court stated that:

> Property interests, of course, are not created by the Constitution.

The search for a "fundamental interest," for equal protection purposes is, to the contrary, a search for a constitutional nexus; as this Court stated in *Rodriguez*:

> Thus the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. *Rather, the answer lies in assessing whether there is a right to education explictily or implicitly guaranteed by the Constitution.* (411 U.S. 1, 33-34) (Emphasis added).

In fact, in *Rodriguez* this Court apparently anticipated and rejected the assertion now being made by the District.

In a discussion of welfare litigation, this Court noted that in *Dandridge* v. *Williams*, 397 U.S. 471, 90 S.Ct. 1153 (1970), it had rejected the contention that the right to welfare should be treated as "fundamental" for equal protection purposes, while contemporaneously ruling in *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S.Ct. 1011 (1970), that the deprivation of welfare was the deprivation of a protected property interest deserving Due Process protections. See discussion in *Rodriguez, supra*, 411 U.S. at 33 n.72. As in the case of welfare, the right to a driver's license is not "fundamental"; yet as the Court acknowledged in *Bell* v. *Burson, supra*, 402 U.S. 535, it is a statutory entitlement subject to Due Process protections. Likewise, education in Ohio is a statutory entitlement and should be accorded, at a minimum, the same protections.

It is, of course, reasonable that a "protected interest" under the Due Process Clause be different from a "fundamental interest" under the equal protection clause. The purposes and orientation of those two clauses are different. On the one hand, procedural due process is designed to protect the individual against arbitrary or mistaken governmental decision-makers; on the other hand the equal protection clause aims to insure that like-situated persons receive similar treatment.

Different as the orientation is between the two clauses, the purpose served by the "fundamental interest" designation is unique to the equal protection clause. That purpose is to provide a framework for measuring the degree of justification the state must give when it treats groups or individuals differently. If a "fundamental" or constitutionally-based interest is involved, the state has a higher burden of justification than if a non-fundamental interest is involved.

This whole framework and its reason for existence has no applicability to the measurement of, or need for, procedural safeguards under the Due Process Clause.

II. A School Suspension Is Stigmatizing and Results in a Loss of Reputation: as Such, It Requires Due Process Protection.

In *Wisconsin* v. *Constantineau*, 400 U.S. 433, 437, 91 S. Ct. 507, 510 (1971), this Court stated:

> Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him notice and an opportunity to be heard are essential.

This statement in *Constantineau* was a reiteration of principles enunciated in *Weiman* v. *Updegraff*, 344 U.S. 183, 191, 73 S. Ct. 215, 218-219 (1952), and *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 168, 71 S. Ct. 624, 646 (1951) (Frankfurter, J. concurring).

Although explicit psychological testimony is not required to establish that a suspension officially stamps a child as a "trouble maker," several prominent psychologists did testify at the trial to confirm that the stigma is this, and may be much more. Dr. Herbert Rie, the Chairman of the Section on Child Development and Psychology, Childrens' Hospital, Columbus, Ohio and Professor in the Department of Pediatrics & Psychology at Ohio State University, testified that this labeling by teachers had the potential of serious educational consequences and could also adversely affect the child's dealings with his family, neighbors and peers.[21] Indeed, this seems so basic that one would expect it to have served as the judicial basis in other Due Process exclusion cases, and it has. In what is probably the leading case in the area of school exclusion, *Dixon* v. *Alabama State Board of Edu-*

[21] Appendix, pp. 171-82. See also, the testimony of Dr. Robert Woody on this point, Appendix, pp. 154-162.

cation, 294 F.2d 150, 157 (5th Cir. 1961), *cert. denied*, 368 U.S. 930 (1961), the basis for providing Due Process protections to an excluded student was the recognition of the stigma that was likely to attach to the student. See also, *Vought* v. *Van Buren Public Schools*, 306 F. Supp. 1388, 1393 (E.D. Mich. 1969); *Cf. Breen* v. *Kahl*, 296 F. Supp. 702, 707 (W.D. Wisc. 1969), aff'd, 419 F.2d 1034 (7th Cir. 1969).

In the preparation for this brief, Counsel for the students surveyed other more concrete forms of harm that result from a suspension. Although detailed discussion of the findings will be deferred to that section dealing with harm and its application to this case,[22] we note that a substantial probability exists that a suspension of a high school student may limit both college and employment opportunities. This is further substantiated by the testimony of Floyd Horton, a former Counselor in the Columbus Public School and presently a Doctoral candidate in the School of Educational Administration at Ohio State University.[23]

In sum the designation of a student as "suspended" by definition is a negative label which has the substantial potential of causing serious harm. It is the sort of stigma that should receive some prior procedural protection under the rule of *Constantineau*.

III. Due Process Requires a Prior Hearing Whenever a Protected Interest Is Invaded or a Stigma Imposed — Absent Extraordinary Circumstances.

There is probably no principle more firmly embeded in the law than the requirement that the invasion of a protected interest be preceded by some form of Due Process

[22] *Infra*, p. 29.
[23] Appendix, pp. 182-88.

protection. Under the state legislation herein attacked neither a prior nor subsequent hearing is accorded a suspended student, and only a subsequent hearing is accorded an expelled student. Clearly this treatment runs afoul of the principle.

In *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S. Ct. 652, 656-57 (1950), this Court stated:

> Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require the deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

In *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 89 S. Ct. 1820 (1969), this Court ruled that a wage garnishment must be preceded by some form of adequate procedural protection. In *Sniadach*, unlike the present case, there was at least the opportunity for a subsequent hearing.

In *Goldberg* v. *Kelly*, 397 U.S. 254, 90 S. Ct. 1011 (1970), this Court ruled that the termination of welfare benefits must be preceded by Due Process protections. It is notable that the protections that were offered, but found to be inadequate in *Goldberg*, were extensive compared to the nonexistent protections offered to a student in Ohio. In *Goldberg*, the welfare recipient was entitled to seven (7) days written notice of the intent to discontinue benefits, the right to a personal meeting with a case worker prior to the discontinuance, the right to file a written statement with a supervisor, and the right to a post termination hearing. The suspended student in Ohio has *no* protection.

In *Boddie* v. *Connecticut*, 401 U.S. 371, 378-79, 91 S. Ct. 780, 786 (1971), this Court stated:

> That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. (Footnote omitted)

In *Bell* v. *Burson*, 402 U.S. 535, 542, 91 S. Ct. 1586, 1591 (1971), this Court ruled that a hearing must precede the deprivation of a drivers license; this was despite the fact that procedures were in existence which were more protective than here. In *Bell* there was a prior hearing to determine whether the person whose license was to be revoked was properly identified. There is not even this minimal protection for the Ohio student.[24]

In several recent cases this Court has explicitly reaffirmed the principle that Due Process requires some form of a hearing prior to the deprivation of a protected interest. In *Fuentes* v. *Shevin*, 407 U.S. 67, 82, 92 S. Ct. 1983, 1995 (1972), this Court stated:

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[24] Although the concurring opinion by Justices Powell and Blackmun in *Arnett* v. *Kennedy*, 42 U.S.L.W. 4513 (1974), denies the right of a full scale trial-type hearing prior to the dismissal of a civil service employee, it is notable that the employee had extensive pre-dismissal and post-dismissal rights in comparison to the students in the present case. Those rights included: (a) written notice of charges, (b) access to materials upon which charges are based, (c) the right to respond orally and in writing to the charges, and (d) the right to present affidavits. All of the above-listed rights accrued before dismissal. After dismissal the employee had the right to a full scale evidentiary hearing. The student in Ohio has absolutely no rights under 3313.66 ORS.

> The Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided *before* the deprivation at issue takes place. (emphasis added)

Finally, in *Board of Regents of State College* v. *Roth*, 408 U.S. 564, 570-71, 92 S. Ct. 2701, 2705 (1972), this Court stated:

> When protected interests are implicated the right to some kind of prior hearing is paramount.

This Court has recognized a limited exception to the above-stated rule whenever emergency circumstances exist.[25] The District Court recognized that if a narrowly defined emergency did exist prior procedures need not be utilized, but that a subsequent hearing must be held.[26] This is a reasonable approach; but, of course, the statute under attack is not limited to emergencies.

This Court's development of the prior hearing principle is obviously predicated upon a recognition that once the deprivation has taken place it is virtually impossible to make the person whole by a subsequent proceeding. As stated in *Armstrong* v. *Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191 (1965):

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[25] See, e.g., *Central Union Trust Co.* v. *Garvan*, 254 U.S. 554, 41 S.Ct. 214 (1921); *Phillips* v. *Commissioner of IRS*, 283 U.S. 589, 51 S.Ct. 608 (1931); *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U.S. 594, 70 S.Ct. 870 (1950).

[26] Appellees Motion To Affirm pp. 60-61. Indeed, the need for a hearing is increased when resort is to an emergency suspension; as Justice Frankfurter stated in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 171 "[The opportunity to be heard] should be particularly heeded at times of agitation and anxiety, when fear and suspicion impregnate the air we breathe" (Frankfurter, concurring).

> A fundamental requirement of due process is the "opportunity to be heard." *Grannis* v. *Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 783. It is an opportunity which must be granted at a meaningful time and in a meaningful manner.

As in the cases enunciating this Due Process principle, irreparable loss will be suffered through a suspension that cannot be completely remedied by a subsequent adjudication of innocence.[27] As the chief witness for the District, Norval Goss, conceded:

> Any absence from school can, of course, have negative effects and that would include suspension from school.[28]

It is not reasonably to be expected that a teacher will be fully able, or even likely motivated, to compensate for the time missed from school;[29] a day lost is a day lost no matter how one views it.

Further, although some mitigation of the psychological harms inherent in an unjust suspension might be expected from a subsequent hearing, it is not possible for the child to be made whole. For a child to be declared innocent of wrongdoing after having been irreparably excluded from school for a period of time would inevitably appear to be administrative double-talk. The potential psychological fall-out would seem to be far from speculative.

No reason, either administrative or substantive, thus exists why the "root requirement" of a prior hearing, denied by the Ohio Statute, should be dispensed with when

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[27] It should, of course, be remembered that there is no provision for even a subsequent hearing in the case of a suspension under the Ohio legislation.

[28] Appendix, pp. 165-66.

[29] See, e.g., testimony of Floyd Horton, Appendix, p. 184.

a child is suspended from school — absent a narrowly defined emergency.

The basic purpose underlying the Due Process Clause is to avoid arbitrary, capricious, mistaken or authoritarian infringements of significant interests such as education. Recent studies and decisions show that just such infringements do take place in the educational sphere. In fact a major study recently published concludes that:

> There are strong indications, however, that suspension and expulsion have been used as weapons of discrimination, especially in resisting increased desegregation and in some instances during protests for more general students' rights.[30]

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[30] The Student Pushout, Victim of Continued Resistance to Desegregation, published by the Southern Regional Council and the Robert F. Kennedy Memorial, 1973, p. VIII (hereinafter Study). The statistics supporting this conclusion show a startling disproportion of minorities being suspended and or expelled. In Little Rock, Ark. in 1971-72 blacks comprised 33.4% of the high school students. 79.9% of the students suspended were black. (p. 2 Study). Although the Richland County, South Carolina (Columbia) District was almost evenly split between blacks and whites in the first half of the 1972-73 school year 1,519 blacks were suspended while only 445 whites were similarly treated (77% black, 23% white) (pp. 3 & 4 Study). In Dallas, Texas a review of HEW 101 Forms showed that 9.1% of the blacks; 6.4% Chicanos and 4.9% of the whites were expelled in 1971-72. (Study, p. 4). In fact an analysis by the Office of Civil Rights of HEW of these forms nation-wide concluded that "the expulsion rate for minority students was twice that for non-minority students, and the expulsion rate for black students was three times that for non-minority students." (Study, p. 5). Indications are that this is not merely a Southern Desegregation Phenomenon. In Omaha, Neb. in 1970-71, 8% of the minority children were expelled from school while only 2.1% of the non-minority children were expelled (Study, p. 6). Other studies have noted the same disproportions. In 11 Integrated Education, 30 "Race and Suspension in New Orleans" it was reported that 15.3% of the black population was suspended in 1971-72 while 8.8% of the white population was suspended. See also the Report of the Select Committee on Equal Educational Opportunity, United States Senate, "Toward Equal Educational Opportunity." (Dec. 31, 1972) at p. 140.

A recent decision by the Commissioner of Education of New York State acknowledged that handicapped children were being improperly suspended from the schools of New York City. *In The Matter of The Appeal of Reid et al.*, No. 8742, New York State Education Department, filed Nov. 26, 1973.

A brief review of some of the leading suspension-expulsion cases shows a clear pattern of the misuse of these sanctions to stiffle First Amendment Rights. In fact, this Court's decision in *Tinker* v. *Des Moines Independent Comm. School Dist.*, 393 U.S. 503, 89 S. Ct. 733 (1969), arose from a suspension, and the decision in *Papish* v. *Board of Education*, 410 U.S. 667, 93 S. Ct. 1197 (1973) emanated from an expulsion. See also, *Quarterman* v. *Byrd*, 453 F.2d 54 (4th Cir. 1971); *Shanley* v. *Northeast Ind. Sch. Dist.*, 462 F.2d 960 (5th Cir. 1972); *Scoville* v. *Bd. of Ed.*, 425 F.2d 10 (7th Cir. 1970), and *Hatter* v. *Los Angeles City High School Dist.*, 452 F.2d 673 (9th Cir. 1971).[31]

In sum, school officials are not immune from the same human vices or foibles that have given rise to a recognition of the need for Due Process protection in other areas. They can and do make mistakes, they can and do act arbitrarily or discriminatorily. Students should not be deprived of an education without at least being afforded

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[31] Professor Charles Allan Wright, in discussing the need for procedural protections for the disciplined student observes that, "without procedural safeguards the substantive protection would be virtually useless. There would be no point in an elaborate doctrine that students may be disciplined for disruptive action but not for mere expression if some administrators were permitted to make an *ex parte* and unreviewable determination that particular behavior was 'disruptive action' and that a particular student had participated in it! In a system of ordered liberty, therefore, it is essential that substantive rules we applied through fair and reliable procedures." Wright, "The Constitution on Campus," 22 Vand. L.R. 1027, 1059-60 (1969),

some degree of procedural protection.[32] It is educationally counter-productive to permit arbitrary action without constitutional protections. As this Court stated in *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 637, 63 S. Ct. 1178, 1185 (194?):

> The Fourteenth Amendment as applied to the States, protects the citizen against the State itself and all its creatures — Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

To permit suspensions without providing constitutional protections against arbitrariness surely teaches youth to discount important principles of our government as mere platitudes.

IV. THE DISTRICT COURT CORRECTLY RULED THAT "THE MAGNITUDE OF THE DEPRIVATION AFFECTS THE FORMALITY AND COMPREHENSIVENESS OF THE DUE PROCESS SAFEGUARDS; IT DOES NOT AFFECT THE BASIC FACT THAT THESE SAFEGUARDS SHIELD THE STUDENT FROM ARBITRARY OR CAPRICIOUS INTERFERENCE WITH HIS RIGHT TO EDUCATION."[33]

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[32] It is true, as Appellants note, that no evidence was before the lower court concerning racial discrimination or First Amendment infringements. Yet the clear evidence of misuse of suspension procedures points up the need for procedural protections in general; and, of course, there was evidence before the lower court of arbitrary, mistaken suspensions.

[33] Appellees' Motion To Affirm, p. 55.

This Court has forcefully and consistently held that the extent of deprivation of a protected interest does not affect the root requirement of some form of prior hearing: absent a finding of *de minimis* harm, not applicable in a school suspension setting, the element of harm is properly considered only in determining the formality of the procedures required.

In *Boddie* v. *Connecticut*, 401 U.S. 371, 378-79, 91 S. Ct. 780, 786 (1971), this Court stated:

> The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings. That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interests, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. (footnote omitted)

In *Fuentes* v. *Shevin*, 407 U.S. 67, 85-86, 92 S. Ct. 1983, 1997 (1972), this Court, in an observation that has special poignancy in the immediate case stated:

> The Fourteenth Amendment draws no bright lines around three-day, 10-day or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause. ***While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not***

> *decisive of the basic right to a prior hearing of some kind.* (emphasis added)

Finally in *Roth, supra*, this Court stated:

> . . . and a weighing process has long been a part of any determination of the *form* of hearing required in particular situations by procedural due process. 408 U.S. at 570.

In a footnote to this quote, this Court made clear just when the weighing process takes effect. This Court stated:

> The Constitutional requirement of opportunity for *some* form of hearing before deprivation of a protected interest of course, does not depend upon such a narrow balancing process. 408 U.S. at 570, n. 8.

The District has cited several cases which hold that when 'grievous loss' is suffered Due Process protections must apply.[34] This does not contradict the above statements. If 'grievous loss' means great loss then surely it is encompassed within the ambit of these cases. The District however argues that at a minimum great loss (grievous loss) must be suffered before Due Process protections apply. This interpretation contradicts the above holdings and ignores several other recent statements indicating what the correct threshold of injury should be.

In *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 342, 89 S. Ct. 1820, 1823 (1969), Mr. Justice Harlan stated that any deprivation that could not be characterized as "*de minimis*" must be preceded by a hearing. This concurring view was adopted and reiterated by the majority

[34] *Morrissey v. Brewer*, 408 U.S. 471 (1972); *Goldberg v. Kelly*, 397 U.S. 254 (1970).

in *Fuentes* v. *Shevin, supra,* 407 U.S. at 90, n. 21, where it was stated:

> The relative weight of liberty or property interests is relevant, of course, to the form of notice and hearing required by due process. See, e.g., *Boddie* v. *Connecticut,* 401 U.S. 371, 378, 91 S. Ct. 780, 786, 28 L. Ed. 2d 113 and cases cited therein. But *some* form of notice and hearing — formal or informal — is required before deprivation of a property interest that "cannot be characterized as de minimis." *Sniadach* v. *Family Finance Corp., supra,* 395 U.S., at 342, 89 S. Ct. at 1823 (Harlan, J. Concurring).

The approach suggested by the School District would throw the entire law of Due Process into chaos, result in increased litigation and burden governmental officials with an impossible task of determining when process is due. It would appear to be a virtually impossible mental task to determine whether an interest is so important, and an invasion so serious, as to require a prior hearing when those exact same elements must be weighed in determining the form of the hearing. It is submitted that the present flexibiity as to form creates a degree of uncertainty for both government officials and those affected by governmental activity that would become an impossible quagmire if it were carried over into the basic question of whether any hearing is required. This Court's previously-cited decisions wisely avoid this result.

There can be little question that the deprivation of education for even a short time, creates more than *de minimis* harm. When one considers the certain harm from loss of schooling and the substantial likelihood of collateral consequences it becomes manifestly irrational to argue against the need for procedural protections.

The direct, immediate, and certain effect of a suspension is that the child is excluded from education for a period of time. For the marginal child who is most likely to be affected by a mistaken or arbitrary suspension, several days of missed schooling might well defeat any chance he has of keeping up with the class; even for other children, the exclusion from school is unlikely to be compensated. Not surprisingly, the record discloses that overworked teachers are unlikely to take the time to help the student overcome his absence;[35] even if such efforts were made, the important give and take of classroom discussion is certain to be lost.[36] The chief witness for the District conceded the possibility of educational harm.[37] In terms of grades, the standard practice in Columbus, as in many districts, is to give zeros for all work missed.[38]

The potential psychological harm was well documented at the trial. The District Court summarized the unrefuted testimony of two prominent Ohio Psychologists as follows:

> The effects of suspension are not uniform. Most suspended students respond in one or more of the following ways:
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> 1. The suspension is a blow to the student's self-esteem.
> 2. The student feels powerless and helpless.
> 3. The student views school authorities and teachers with resentment, suspicion and fear.

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[35] See testimony of Floyd Horton, Appendix, p. 184.

[36] See *Sweatt* v. *Painter*, 339 U.S. 629, 634 (1950); *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637, 641 (1950); and *Brown* v. *Board of Education*, 347 U.S. 483 (1954), recognizing the immeasurable importance of classroom discussion and interchange.

[37] See testimony of Norval Goss, Appendix, pp. 165-66.

[38] Appendix, pp. 164-65.

4. The student learns withdrawal as a mode of problem solving.
5. The student has little perception of the reasons for the suspension. He does not know what offending acts he committed.
6. The student is stigmatized by his teachers and school administrators as a deviant. They expect the student to be a trouble maker in the future.

A student's suspension may also result in his family and neighbors branding him a trouble maker. Ultimately repeated suspension may result in academic failure.[39]

A school suspension, regardless of length, can also have negative consequences on college admissions and upon future employment opportunities. A survey taken by the Students' Counsel in the preparation of this brief revealed that four (4) of twelve (12) randomly chosen Ohio Colleges ask expressly on undergraduate application forms whether the applicant has ever been suspended from school.[40] In addition, virtually all colleges asked for tran-

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[39] Appellees' Motion To Affirm, p. 40. See testimony of Dr. Robert Woody, Appendix, p. 154 *et seq.* and Dr. Herbert Rie, Appendix, p. 171 *et seq.* See also, a sampling of the literature in support of these theses; Flowers, C.E., "Effects of An Arbitrary Accelerated Group Placement on The Tested Academic Achievement of Educationally Disadvantaged Students." Unpublished Doctoral Dissertation, Teachers College, Columbia Univ., 1966; Masling, J., "Differential Indoctrination of Examiners and Rorschach Responses," 29 *Journal of Consulting Psychology*, 198-201 (1965); Merton, R.K., "The Self-Fulfilling Prophecy," 8 *Antioch Review* 193-210 (1948); Rosenthal, R., *Experimenter Effects In Behavioral Research* (New York: 1966); Rosenthal, R. and Lenore Jacobson, "Teachers' Expectancies: Determinates of Pupils' I.Q. Gains," 19 *Psychological Reports* 115-118 (1966).

[40] The application forms for the following schools were received. A "yes" indicates that they expressly ask information about High School suspensions. A "no" indicates that nothing is expressly asked: Antioch—yes; Bowling Green Univ.—no; Case Western—yes; Univ. of Cincinnati—no; Cleveland State—no; Hiram—no;

scripts and asked for school officials to evaluate the student's character and fitness. A suspension might well appear on a transcript or be relied upon by the school official making such an evaluation.[41] Furthermore, the record indicates that students suspended at certain times of the year may irremediably miss certain tests, contests or conferences which have a bearing on college admissions and/or the possible receipt of financial aid.[42] A suspension thus has the substantial probability of causing negative consequences for the college applicant.

The student who decides to seek employment after high school may also suffer harm from an unjust suspension. A review of the basic form book for personnel officers indicates that high school reference checks often ask about the disciplinary problems of the applicant while he was a student.[43] A school official working from a record might well report improper suspensions and thus limit the possibility of employment for the student.

Several other potential consequences that may flow from a suspension have been noted by various studies. One study has observed that:

> While hard data is very rare, a substantial cause and effect relationship does appear to exist between students who are suspended or expelled, on the one hand,

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Oberlin—no; Kent State—yes; Ohio State—no; Otterbein—no; Ohio Wesleyan—yes; Ohio Univ.—asked about College dismissal; The one non-Ohio school surveyed, Harvard College, expressly asks the applicant if he has been suspended.

[41] One example of how a suspension may continue to haunt a student, irrespective of its propriety, is shown by the student records of three of the nine named Plaintiffs. Their records have express notations indicating the existence of the suspensions. See Appendix, at pp. 219, 244 and 256.

[42] Testimony of Floyd Horton, Appendix, pp. 182-88.

[43] Marting, AMA Book of Employment Forms, American Management Assn., 1967. See especially p. 423 *et seq.*

> and students who become labeled as dropouts on the other. This is an area in urgent need of extensive in-depth research.[44]

Others have noted that students not attending school have an increased likelihood of police contact. A summary of the results of a Public Hearing in Illinois, at which twenty-six child service professionals testified, concluded that:

> Those testifying based their remarks on their experience and observation, consequently there are many different and divergent opinions noted throughout the testimony.
> It was made clear however, the juveniles out of school as the result of truancy, expulsion or suspension have police contact for any number of offenses.[45]

The Student-Appellees do not contend that every one of the potential harms listed-above will happen to every suspended student. In fact, only the educational loss is certain to happen. There is however a substantial probability that any one or combination of these harms may result from a suspension.[46] Not one of these harms, es-

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[44] "The Student Pushout: Victim of Continued Resistance to Desegregation," Published by the Southern Regional Council and the Robert F. Kennedy Memorial, 1973.

[45] Remarks and excerpts from Public Hearings on Truancy & Expulsion, Educational Service Region, Cook County, Chicago, Illinois. Dec. 13 and 14, 1972, published in ERIC ED 078926.

[46] It is notable that the "harms" envisioned flowing from a garnishment, *Sniadach*, *supra*, 395 U.S. 337 (1969), welfare cutoff, *Goldberg*, *supra*, 397 U.S. 254 (1970), or driver's license revocation, *Bell*, *supra*, 402 U.S. 535 (1971), were not certain to follow. Certainly not every employee had his back driven to the wall by a garnishment or was in dire straits as a result of a welfare cut-off or license revocation. In fact, it seems more certain that a suspension will cause some harm than those acts.

pecially the educational, can be characterized as *de minimis.*

Various lower courts have noted the existence of these harms. In *Hatter* v. *Los Angeles City High School District,* 452 F.2d 673, 674 (9th Cir. 1971), the Ninth Circuit noted that evidence of disciplinary action in a student's records may "threaten prejudice with respect to college admissions and future employment." The court in *Sullivan* v. *Houston Indep. School Dist.,* 307 F. Supp. 1328, 1338 (S.D. Tex. 1969), noted that "collateral consequences" may flow from a suspension.

In *Vail* v. *Board of Education of Portsmouth School District,* 354 F. Supp. 592, 603, n. 4 (D.N.H. 1973), the Court found that, in addition to the immediate educational consequences:

> . . . the record of the suspension may jeopardize a student's future employment and educational opportunities as guidance counselors prepare student recommendations after having examined the student's permanent record file which contains the notice of suspension.

In *Shanley* v. *Northeast Ind. Sch. Dist., Bexar County, Tex.,* 462 F.2d 960, 967, n. 4 (5th Cir. 1972), the Court, while abjuring a formula for determining whether a harm is major or minor, found that:

> . . . a suspension of even one hour could be quite critical to an individual student if that hour encompassed a final examination that provided for no "make-up." We are convinced here that the three-day suspensions issued to these five high school seniors, who were in the process of applying to and inter-

viewing for college admission and for scholarships, constitute a justiciable penalty under any "major/minor" dichotomy.

See also *Breen* v. *Kahl*, 296 F. Supp. 702, 707 (W.D. Wisc. 1969), *aff'd*, 419 F.2d 1034 (7th Cir. 1969).

Harm, far exceeding *de minimis*, is thus substantially certain to flow from a suspension, irrespective of length. The degree of harm and the certainty of harm undoubtedly increases substantially if the suspension is viewed as arbitrary, capricious or mistaken. Some form of prior procedural protection is manifestly necessary to avoid or mitigate these harms.

V. The Lower Court Cases Starkly Show the Need for a Prior Hearing Rule.

The lower court decisions, insofar as they provide guidance for this Court, present an irrefutable argument for a prior hearing rule. These cases, by their very inconclusiveness and judicial arbitrariness show the unworkability of a conceptual framework that attempts to measure harm and to place such measurement into a formula for determining whether a prior hearing is required. The decision by the lower court in the present case in its reliance upon this Court's precedents presents a stark contrast to the judicial uncertainty found in many other decisions.

Most lower court cases until recently have attempted to measure harm by the length of time out of school. While harm unquestionably increases as the exclusion grows longer, the evidence before the District Court in this case, and the other indicia of harm presented, *supra*, are clear proof that harm is not purely or even mainly a function of time. An unjust one day suspension under

certain circumstances can be devastating. Further, as the cases show, the equating of time with harm results in a purely subjective and arbitrary determination.

The recent law of the Fifth Circuit, the Circuit which has heard more suspension cases than any other, points up this problem. In *Black Students of N. Ft. Meyers Jr.-Sr. High School* v. *Williams*, 335 F. Supp. 820, *aff'd per curiam*, 470 F.2d 957 (5th Cir. 1972), the Court held that a suspension of ten days was a suspension for "a substantial period of time" and thus was in violation of the Due Process Clause if not preceded by a hearing. In *Murray* v. *West Baton Rouge Parish School Board*, 472 F.2d 438 (5th Cir. 1973), the Court ruled that suspensions that were for not "more than a few days," 472 F.2d at 443, need not be preceded by a hearing. In *Shanley* v. *Northeast Ind. Sch. Dist., Bexar County, Tex.*, 462 F.2d 960, 967 n. 4 (5th Cir. 1972), as previously noted *supra*, the Court ruled that a three-day suspension under the facts of the case was of such a magnitude that it constituted a "Justiciable Penalty." The dilemma is manifest. It is a subjective and necessarily arbitrary judicial determination to say that after a given number of days, such harm gives rise to the need for a prior hearing. It is unworkable to have a determination made on a case by case basis. Further, the length of the suspension is only one ingredient in determining harm. It is submitted that only a prior hearing rule makes sense and avoids this dilemma.

The pattern discerned in the Fifth Circuit is a pattern that can be traced nationwide. In the District of Columbia, for example, a student may not be suspended for more than two (2) days without being given a rather extensive hearing, *Mills* v. *Board of Educ. of District of Columbia*, 348 F. Supp. 866, 878 (D.D.C. 1972), while a decision in the Tenth Circuit, *Hernandez* v. *School Dist.*

No. One, Denver, Colo., 315 F. Supp. 289 (D. Colo. 1970), rules that a statute which permits suspension for up to twenty-five days without any hearing does not violate Due Process.

Compared with this subjective ill-conceived search for a necessarily arbitrary number of days, the District Court's holding in the present case presents a stark, reasoned contrast. The Court below stated:

> It is important to remember that even though the interference with the liberty of a right to education is limited, the student's right to be treated with procedural fairness prior to a deprivation of the right to an education is not lost. The magnitude of the deprivation affects the formality and comprehensiveness of the due process safeguards; it does not affect the basic fact that these safeguards shield the student from arbitrary or capricious interference with his right to education.[47]

Several recent decisions are in substantial accord with the ruling in this case. In *Vail* v. *Board of Education of Portsmouth School District*, 354 F. Supp. 592, 603 (D. N.H. 1973), the Court ruled that prior to any suspension an "informal administrative consultation" must be held. In *Pervis* v. *La Marque Independent School District*, 466 F.2d 1054, 1058 (5th Cir. 1972), the Court stated that:

> When the punishment to be imposed is minimal, *full* compliance with the requisites outlined in *Dixon* is not required. See note 3, *supra*. Moreover it may be that a student can be sent home without a hearing for a short period of time if the school is in the throes of violent upheaval. But even in such a case, a hearing

[47] Appellees' Motion To Affirm, p. 55.

would have to be afforded at the earliest opportunity. Cf. *Dunn* v. *Tyler Independent School Dist.*, 5 Cir., 1972, 460 F.2d 137. (emphasis added)

In sum, the lesson to be learned from most of the lower court decisions is that any attempt to inject the question of harm into the question of whether any prior hearing should be given as opposed to the determination of the form of a hearing is doomed to result in an impossibly subjective determination. This points up the reasonableness of retaining this Court's long standing prior hearing rule. Several of the more recent decisions, in addition to that of the instant case, support this proposition.

VI. A Statute Which Permits a Deprivation of a Protected Interest Without Also Prescribing Constitutional Procedures Is Facially Invalid.

This Court has long held that a statute which permits the deprivation of a protected interest without also prescribing adequate Due Process protection is facially invalid. Ohio Revised Statute 3313.66, by providing for a deprivation of education without providing procedural safeguards for the student is thus invalid on its face.

In *Coe* v. *Armour Fertilizer Works*, 237 U.S. 413, 35 S.Ct. 625 (1915), a Florida statute permitted a judgment creditor to execute on the property of a stockholder of a corporation which had no assets. The statute did not specifically prescribe constitutionally adequate procedural protections for the stockholder. This Court held that this lack of specificity voided the statute. Although recognizing that in given cases, and indeed in the case before it, the stockholder could receive adequate notice and opportunity to challenge the execution, the Court nevertheless held the statute violated Due Process. In so holding, this Court quoted from several earlier decisions requiring adequate

procedures to be spelled out in the statute permitting the deprivation. See especially the discussion at 237 U.S. 629.

This same principle was recently implicitly recognized in *Wisconsin* v. *Constantineau, supra,* 400 U.S. 433 (1971), where this Court struck down, as facially invalid, a statute permitting an invasion of the liberty of reputation without also prescribing adequate procedures.

Likewise in *Fuentes* v. *Shevin,* 407 U.S. 67, 92 S.Ct. 1983 (1972), the Florida and Pennsylvania replevin statutes were held to be facially defective for they permitted an invasion of a protected property interest without prescribing adequate procedures.

Thus, given the protected nature of education in Ohio, and the deprivation thereof permitted by ORS 3313.66 it is manifest that the Section is facially invalid for failing to prescribe constitutionally sufficient protections.

Conclusion

Both reason and this Court's ample precedents require a holding that a school suspension without any form of notice or hearing violates the Due Process Clause of the Fourteenth Amendment.

Under express holdings of this Court, and under the rationale used to support those holdings, education in Ohio must be considered to be a protected interest. Further, common sense and the evidence in the record lead inexorably to the conclusion that a suspension creates the sort of stigma that should be protected against.

This Court has invariably required that a hearing of some form must precede the deprivation of a protected interest or the imposition of a stigma. No reason exists for a variation from this requirement.[48] We would only note that it is not the deprivation of a minor interest

[48] The issue here, of course, is whether a student can be suspended without any hearing. If the Court feels compelled to discuss the

that is herein involved but rather an interest so important that this Court has observed that:

> In these days, it is doubtful that any child may reasonably be expected to succeed life if he is denied the opportunity of an education. *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954).

A school suspension, even of short duration, has the potential of seriously jeopardizing this opportunity.

It is notable that virtually all of the major national educational associations endorse the concept of fundamental protection for the disciplined student. The National Education Association has resolved that:

> Procedures may vary in formality with the gravity of the offenses or of the sanction to which an accused person is liable. In no case may the student's rights be abridged or denied, and in no case may the same person act as both judge and prosecutor.[49]

The Joint Statement on Rights and Freedoms of Students[50] notes that while "practices in disciplinary cases may vary in formality with the gravity of the offense and the sanctions which may be applied," nevertheless,

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form of the hearing, we would suggest that once school officials have been given the latitude to address the "extraordinary situation" i.e., emergency, no reason exists in fact to deny a student, not within the ambit of the extraordinary situation, the benefit of real, meaningful procedural safeguards. Moreover, as the lower court noted, the student summarily suspended pursuant to an extraordinary situation should promptly be given a subsequent hearing.

[49] NEA Resolution 60-12, Published in the "Code of Student Rights and Responsibilities," NEA, Washington, D.C., 1971 at p. 29.

[50] Subscribed to by the Association of American Colleges, the American Association of University Professors, the National Student Association, the National Association of Student Personnel Administrators, the National Association of Women Deans and Counselors, and the American Association of Higher Education.

> In all situations procedural fair play requires that the student be informed of the nature of the charges against him, that he be given a fair opportunity to refute them, that the institution not be arbitrary in its action and there be a provision for appeal of the decision.[51]

The American Association of School Administrators recently resolved that suspensions and expulsions should not be utilized unless the "health and safety of other students or personnel in all schools is jeopardized."[52]

In sum, this Court's precedents and good sense require that procedural protections precede exclusion from school. Such protection is minimally necessary to prevent the arbitrary, mistaken or capricious deprivation of the all-important right to education. Affirmance of the District Court's decision would achieve this goal.

Respectfully submitted,

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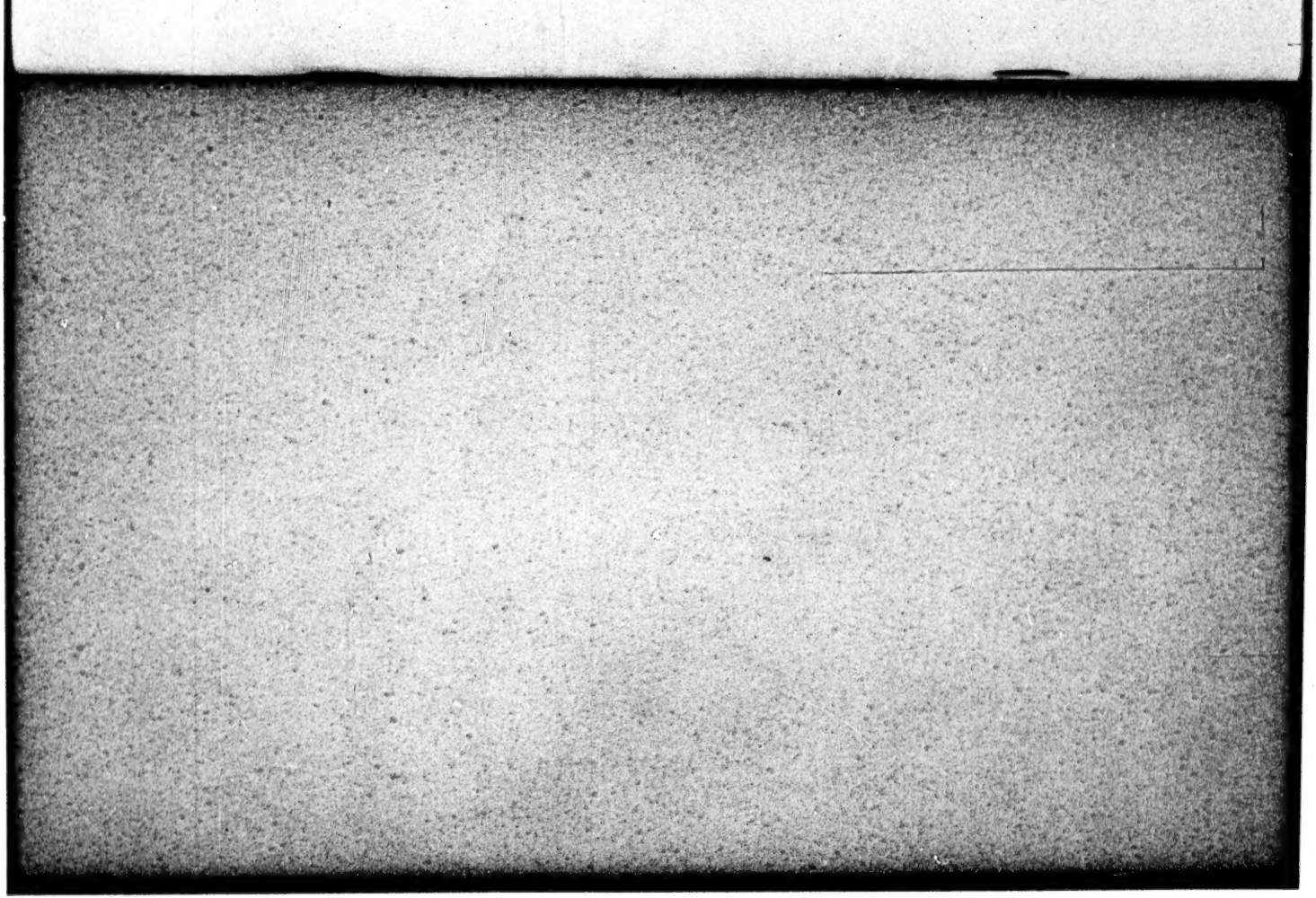
[51] Found in 53 American Assn. of University Professors Bulletin 365, 368 (1967).

[52] Vol. 7, No. 40 Education Daily at p. 5 (Feb. 27, 1974).



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OCTOBER TERM, 1973

No. 73-898

NORVAL GOSS, et al.,

Appellants,

v.

EILEEN LOPEZ, et al.,

Appellees.

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BRIEF OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AMICI CURIAE IN SUPPORT OF THE DECISION BELOW

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OPINION BELOW

The opinion below is contained in Appellants' Jurisdictional Statement at 20 (Appendix B).

JURISDICTION

The jurisdiction of this Court to review the judgment below is invoked pursuant to 28 U.S.C. § 1253. The Court noted probable jurisdiction on February 19, 1974, 42 U.S.L.W. 3468.

CONSENT OF THE PARTIES

The National Association for the Advancement of Colored People and the Southern Christian Leadership Conference file this Brief with the consent of both parties, whose letters of consent have been filed with the Clerk.

QUESTION PRESENTED

Whether the court below was correct in holding that the exclusion of Ohio students from public school for up to ten days without *any* form of fact-finding hearing or conference was a violation of the Due Process guarantees of the Fourteenth Amendment to the United States Constitution?

INTEREST OF *AMICI CURIAE*

The National Association for the Advancement of Colored People (NAACP) and the Southern Christian Leadership Conference (SCLC) are nonprofit membership associations representing the interests of more than 500,000 members throughout the United States. For many years both amici have sought through the courts to establish and protect the civil rights of minority citizens. In this respect, NAACP and SCLC have appeared often before this Court as amici in cases involving school desegregation, employment, voting rights, jury selection, capital punishment, and other cases involving fundamental human rights.

The present case is of particular importance to amici because it centers around the role and responsibility of a state to assure that the rights of minority children, as enunciated by this Court twenty years ago in *Brown v. Board of Education*, 347 U.S. 483 (1954), are in fact given the paramount attention that they were accorded at that time.

Amici believe that the duty of school officials to provide school disciplinary procedures which comply with the Fourteenth Amendment is no less important than the duty of school officials to assure meaningful desegregation, because discriminatory application of school discipline can seriously undermine the commitment to desegregation and equal educational opportunities for minority students.

STATEMENT OF THE CASE

Amici adopt the statement of the case set forth in Appellees' Brief on the Merits.

ARGUMENT

This case involves the sweeping and indiscriminate suspension of Black students[1] from Columbus, Ohio public schools for allegedly taking part in demonstrations which occurred following the observance of "Black History Week." Although the facts relating to the schools' charges of misconduct were *very* much in dispute, the principals suspended these students without affording them a hearing or any opportunity to present their account of the events.

Amici are filing this Brief because the legal issues presented here are of extreme importance to minority students throughout this country. As we will show in Part I of this Brief, there is a high, and dramatically disproportionate, incidence nationwide of school suspensions and other forms of disciplinary action against Black students. In most localities a Black is at least two or three times

[1] While the record does not reveal the race of every student suspended, attorneys for appellees have informed amici that all nine named plaintiffs are Black.

more likely than a White to be suspended from public school.

Amici will demonstrate in Part II of their Brief that these disciplinary actions not only hit minority students more frequently than others, but also that they affect minority students more severely. This Court often has stressed the importance of education in helping to break the cycle of discrimination and deprivation that may freeze minority citizens out of their full share of rights and opportunities in our society. Disadvantaged Black children, who are uniquely dependent upon public education to achieve full equality, frequently enter school already at an academic disadvantage relative to their White classmates, and can be expected to fall further and further behind if their schooling is interrupted by unjustified suspensions. Numerous studies and data confirm that racial discrimination in the application of school discipline – especially in the context of schools encountering the stresses of the desegregation process – tends to negate that valuable effect of our educational system.

Finally, in Part III, we review the factors that this Court has held to be essential in determining the constitutional requirements of procedural due process. Weighing those factors in this case, especially considering the significant possibility of racial discrimination implicit in off-the-record, unreviewable disciplinary actions, amici respectfully urge the Court to conclude that Fourteenth Amendment principles of due process of law require state officials to hold hearings before suspending students from public schools.

I.

MINORITY STUDENTS ARE THE PRINCIPAL VICTIMS OF STANDARDLESS, UNREVIEWABLE SUSPENSIONS AND EXPULSIONS FROM PUBLIC SCHOOLS.

Countless studies and statistical reports have documented that minority students are far more likely than others to suffer the drastic punishment of suspension or expulsion from public school. Whether or not there has been conscious racial discrimination in this or any other individual case, it is clear that the vague standards and lack of due process implicit in Columbus, Ohio school disciplinary rules and procedures result in a body of essentially unreviewable decisions that strike most harshly at minority children.

In Ohio public schools a Black student is more than twice as likely as a White student to be suspended from school. Statistics available from the United States Department of Health, Education and Welfare indicate that in the 1972-73 school year 8 percent of the Black students enrolled in reporting Ohio public school districts were suspended, compared to only 3.7 percent of the White students enrolled in the same school districts.[2]

These statistics are consistent with data showing a similar disproportionate incidence of suspensions among Black students in other states. For example, during a

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[2]Form OS CR 102, 1972-73 Annual Elementary and Secondary School Civil Rights Survey (available at Office for Civil Rights, U.S. Department of Health, Education and Welfare, 330 Independence Ave., S.W., Washington, D.C. 20201).

Interestingly, 46 of the 47 school districts included in this 1973 survey provided HEW with the information requested. The *one* Ohio school district that failed to comply, claiming that the information was unavailable, was the Columbus, Ohio district!

recent period in St. Petersburg, Florida, approximately 50 percent of student suspensions were directed against Black students, although they constituted only 16 percent of the total enrollment. [3] Similarly, in Prince George's County, Maryland, a Black student is more than twice as likely as a White student to be suspended. [4] A survey by the United States Commission on Civil Rights indicates that in some school districts the disproportionate impact of suspensions on minority students may be far higher. [5]

Available statistics on expulsions show the same consistent pattern of Blacks being expelled in far higher percentages than their percentages of enrollment. In 1970-71

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[3] SOUTHERN REGIONAL COUNCIL & ROBERT F. KENNEDY MEMORIAL, THE STUDENT PUSHOUT: VICTIM OF CONTINUED RESISTANCE TO DESEGREGATION 5 (1973) [hereinafter cited as "THE STUDENT PUSHOUT"].

[4] Between September, 1973, and January, 1974, 7 percent of the Black enrollment was suspended, compared to 3 percent of the White enrollment. These figures are available from the Maryland State Board of Education, P.O. Box 8717, Baltimore, Maryland 21240.

[5] The Commission found in a survey of Southwest schools that the ratio of eighth-grade Black students who were suspended twice or more during the 1968-69 school year, compared to Whites in the same category, was four-to-one. School Principal Information Form, Question 46M, Mexican American Education Study, United States Commission on Civil Rights.

Amici have been advised that the Brief to be filed in the instant case by the Children's Defense Fund will contain a more detailed presentation and analysis of recent suspension data. *See generally Sweet v. Childs*, No. 73-3842, 5th Cir., Appellants' Brief at 42 (Jackson County, Fla.: 4-1 ratio); THE STUDENT PUSHOUT 5 (Tampa, Fla.: 2.5-1 ratio); *id.* at 2 (Little Rock, Ark.: 2-1 ratio); Bell, *Race and School Suspensions in Dallas*, 62 INTEGRATED EDUCATION 66 (March-April 1973) (approximately 2-1 ratio); Clarke, *Race and Suspensions in New Orleans*, 63 INTEGRATED EDUCATION 30 (May-June 1973) (same).

the expulsion rate for Black students was *three times* the rate for non-minority students in the 1,226 reporting school districts across the country. Office for Civil Rights, U.S. Department of Health, Education and Welfare, Elementary and Secondary School Civil Rights Survey (1970-71).[6]

The likely explanation of the foregoing statistical disparities is that disproportionate Black suspensions are a consequence of racial discrimination and the tensions attendant to massive desegregation.[7] Suspensions have risen dramatically immediately following integration in school districts throughout the country.[8] Moreover, in

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[6] *See also* THE STUDENT PUSHOUT 4, 7; AMERICAN FRIENDS SERVICE, YOUR SCHOOLS: SPECIAL REPORT 14-15 (April 1974).

[7] Numerous cases have held that statistical disparities such as these can constitute prima facie evidence of racial discrimination. For example, in *Turner v. Fouche*, 396 U.S. 346 (1970), this Court held that the "substantial disparity between the percentages of Negro residents in the county as a whole [60%] and of Negroes on the newly constituted jury list [37%] . . ." was prima facie evidence of racial discrimination. *See also Jones v. Lee Way Motor Freight, Inc.*, 431 F.2d 245 (10th Cir. 1970), *cert. denied*, 401 U.S. 954 (1971); *Alabama v. United States*, 304 F.2d 583 (5th Cir.), *aff'd*, 371 U.S. 37 (1962). In the instant case, it is not necessary to conclude that there is statistical evidence sufficient to prove racial discrimination. However, the statistical disparities do suggest the possibility, if not the likelihood, that suspensions are applied in a racially discriminatory manner.

[8] For example, during the first year of integration in San Francisco, California, suspensions in the sixth grade rose to 795, compared to 491 the year prior to integration. Wright, *The New Word is Pushout*, 4 RACE RELATIONS REPORTER 8, 9 (May 1973). In the Charlotte-Mecklenburg County, North Carolina school district suspensions rose from 1,544 in 1968-69 (prior to the decision in *Swann v. Charlotte-Mecklenburg Board of Education*, 311 F. Supp. 265 (W.D.N.C.), *modified*, 431 F.2d 138 (4th Cir. 1970), *aff'd*, 402 U.S. 1 (1971), that ruled busing was a valid means of achieving desegregation) to 6,652 in 1970-71. THE STUDENT PUSHOUT 4.

prosecuting desegregation cases the Justice Department has recognized that resistance to desegregation may take the form of suspension of Blacks. The Department therefore has sought and obtained court orders expunging students' suspension and expulsion records and establishing requirements for a hearing prior to any suspension.[9] *See, e.g., United States v. Wilcox County Board of Education*, Civil No. 3934-65-H (S.D. Ala., May 15, 1973), *aff'd*, Civil No. 73-3543 (5th Cir., May 2, 1974). It has been documented that disciplinary problems are more common in integrated schools than in either all-Black or all-White schools. Havighurst, Smith & Wilder, *A Profile of the Large City High School*, NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS BULLETIN 76 (January 1971).

> According to one analysis,
> conflict has provoked harsher disciplinary policies, and blacks allege that the policies are applied more rigidly and harshly to them than to white students. School administrators respond that blacks are more inclined to physical aggression, particularly as they are removed from their neighborhoods and placed in an unfamiliar, if not hostile, school environment. *See, e.g., Tillman v. Dade County School Board*, 327 F. Supp. 930 (S.D. Fla. 1971); *Blount v. Ladue School Dist.*, 321 F. Supp. 1245 (E.D. Mo. 1970).
>
> . . . The frequency of disputes (including many that never reach the courts) suggests that in at least some districts educators have not sought diligently

[9]The Office for Civil Rights of the U.S. Department of Health, Education and Welfare, in its evaluation of the desegregation process in the Dallas Independent School District during the 1971-72 school year, noted the aggregate number of suspensions (17,917) as an indication that the desegregation plan was not producing the desired results. Bell, *Race and School Suspensions in Dallas*, 62 INTEGRATED EDUCATION 66, 67 (March-April 1973).

> to make integration work; it also serves as a reminder that in many parts of the country integration signals a social revolution that inevitably causes considerable dislocation and strife. [D. KIRP & M. YUDOF, EDUCATIONAL POLICY AND THE LAW 431 (1974).]

The statistical inference that suspensions are being discriminatorily applied is reinforced by findings that teachers, particularly White teachers, perceive Black children differently from White children. A recent study of more than 50 California elementary schools, conducted by Dr. Jane Mercer, University of California at Riverside, concluded that teachers perceive Black children as being more disobedient than Whites.[10] This finding comports with earlier studies which have concluded that teachers perceive Black children more negatively than White children.[11]

The evidence that disproportionate suspensions may result from racial discrimination highlights the necessity of adequate procedural safeguards to protect minority

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[10] J. MERCER, EVALUATING INTEGRATED ELEMENTARY EDUCATION: TECHNICAL MANUAL, at Table 25 (PRIME ed. 1974), available from Program Research in Integrated Multiethnic Education, a General Assistance Center, University of California, Riverside, Calif., 92502.

[11] In a survey of elementary school teachers in a medium-sized industrial town in the Midwest, the Black teachers perceived their students, who were primarily low-income Black students, differently than did the White teachers. The Black teachers perceived the students as fun loving, happy, cooperative, energetic and ambitious; whereas, the White teachers perceived the students as talkative, lazy, fun loving, high strung and rebellious. Gottlieb, *Teachers and Students: The Views of Negro and White Teachers*, THE DISADVANTAGED LEARNER 437, 444 (1966). Teachers' negative perceptions of the achievement levels of Black pupils have been widely noted. Wilkerson, *Understanding the Black Child*, 46 CHILDHOOD EDUCATION 351 (April 1970); K. CLARK, DARK GHETTO 132 (1965).

students from actual discrimination and from the appearance of discrimination.[12] It is important not only that the system act fairly, but also that it be perceived as acting fairly. If the school denies them procedural safeguards, Black students may perceive that they are being discriminatorily disciplined, whether they are or not. *See, e.g.*, A. CAMPBELL & H. SCHUMAN, SUPPLEMENTAL STUDIES FOR THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS: RACIAL ATTITUDES IN FIFTEEN AMERICAN CITIES 22-26 (1968).

Since broadly worded school rules are especially susceptible of discriminatory application, a hearing is particularly important to provide protection against discriminatory application of facially neutral but vaguely worded school disciplinary policies and, just as importantly, to provide assurance to Black students that no discrimination exists.

II.

SUSPENSION FROM SCHOOL HAS A PARTICULARLY SEVERE IMPACT ON A MINORITY STUDENT.

Suspensions from public school not only affect minority students more frequently than others, but studies suggest that suspensions also result in greater educational detriment to the individual student if he or she is a member of a minority group.

Minority students, who are born economically and socially disadvantaged, are especially dependent on public education as the great equalizer by which they may aspire

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[12] *See Greene v. McElroy*, 360 U.S. 474, 496-97 (1959) (emphasizing importance of procedural standards as protection against intolerance and prejudice).

to achieve greater advantages than their parents.[13] This Court has historically recognized the importance of education to racial minorities. In *Brown v. Board of Education*, 347 U.S. 483 (1954), this Court observed that

> [t]oday, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education. . . . [*Id* at 493.]

Underlying the entire line of public school equal protection cases is the Court's clear commitment to quality education for racial minorities. *See, e.g., Keyes v. School District No. 1*, 413 U.S. 189 (1973); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

Given the vital role of education in our society, and the dependence of racial minorities on education, an inter-

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[13] It has been found that the achievement level of Black students is affected to a greater extent by the quality of public schooling they receive than is the achievement of Whites. OFFICE OF EDUCATION, U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY 22, 297 (1966) [hereinafter cited as "COLEMAN REPORT"]. The "indirect evidence suggests that it is those children who come least prepared to school, and whose achievement in school is generally low, for whom the characteristics of a school make the most difference." *Id.* at 297.

ruption of the educational process for even a few days may produce permanently harmful consequences. It has been widely documented that Black children generally are at an academic disadvantage when they enter the first grade. *See, e.g.*, COLEMAN REPORT 21, 275, 297; C. JENCKS, *et al.*, INEQUALITY: A REASSESSMENT OF THE EFFECT OF FAMILY AND SCHOOLING IN AMERICA (1972) [hereinafter cited as "JENCKS, INEQUALITY"]. They also fall further behind their White classmates in the critical skills of reading and verbal ability with each year of school. [14] COLEMAN REPORT 20-21. For the minority student, who is already at an academic disadvantage, an unjustified suspension may be the final, crippling blow. At the very least, the loss of school time resulting from a suspension, particularly when teachers may not have the time or inclination to assist in making up work, will place the suspended student at a

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[14] "The school appears unable to exert independent influences to make achievement levels less dependent on the child's background. . . ." COLEMAN REPORT 297. The Coleman Report concludes that

> [f]or most minority groups, then, and most particularly the Negro, schools provide little opportunity for them to overcome this initial deficiency; in fact, they fall farther behind the white majority in the development of several skills which are critical to making a living and participating fully in modern society. Whatever may be the combination of nonschool factors – poverty, community attitudes, low educational level of parents – which put minority children at a disadvantage in verbal and nonverbal skills when they enter the first grade, the fact is the schools have not overcome it. [COLEMAN REPORT 21.]

This finding is confirmed by a survey of Southwest public school districts which concluded that more than twice as many Blacks as Whites read below their grade level at 4th, 8th and 12th grades. UNITED STATES COMMISSION ON CIVIL RIGHTS, REPORT: THE UNFINISHED EDUCATION 24 (1971).

serious academic disadvantage. For the marginal student, the suspension may be the difference between passing grades and failing grades, between academic success and failure.

The possibility also exists that a temporary suspension may become permanent through the inertia of the student or for other reasons. *See* 22 RUTGERS L. REV. 342, 346 n.33 (1968). Even if the student returns to school on schedule, there is a tendency for suspensions to be repeated and an increased risk of eventual dropout.[15] This tendency aggravates an already serious dropout problem among Black students.[16]

When dropout occurs, the consequences for Blacks in the job market are particularly serious since Blacks are already disadvantaged by higher rates of unemployment, lower incomes, and a greater proportion of low-prestige or part-time jobs.[17] JENCKS, INEQUALITY 216 *et seq.* A

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[15] *Cf. Madera v. Board of Education*, 267 F. Supp. 356 (S.D. N.Y.), *rev'd*, 386 F.2d 778 (2d Cir. 1967), *cert. denied*, 390 U.S. 1028 (1968).

[16] The Coleman Report found that in 1965 17% of 16-17 year old Blacks were not in school compared to 9% of Whites. COLEMAN REPORT 28. This finding is corroborated by a survey of Southwest public school districts that found that of every 100 Black children entering first grade, 99 reach the eighth grade but only 67 graduate from high school; whereas, of every 100 Whites who enter first grade, 86 finish high school. UNITED STATES COMMISSION ON CIVIL RIGHTS, REPORT: THE UNFINISHED EDUCATION 10 (1971).

[17] In 1969, the median income of Black families as a percentage of White family incomes rose to the highest on record; even so, it was only 63% of median White family income. BUREAU OF LABOR STATISTICS, U. S. DEPARTMENT OF LABOR, BULL. NO. 1699, BLACK AMERICANS: A CHARTBOOK 38 (Table 16) (1971).

[footnote continued]

Black male high school graduate, from his 18th birthday through his 65th, will typically earn $76,000 more than a Black male who did not finish high school. The corresponding figure for a Black female is $73,000. THE STUDENT PUSHOUT 24.

A student suspended even temporarily, particularly one who feels that he has been suspended unfairly, is likely to become increasingly negative in his attitude toward school and toward his own educational achievement. For the Black child who enters school with a low opinion of himself and of his ability to do well, and without basic skills possessed by more advantaged children,[18] this effect on attitude is particularly severe.[19] Moreover, the suspen-

[footnote continued from preceding page]

Blacks tend to be employed in lower-status jobs than Whites. In 1970 40% of Blacks were employed as household workers, service workers, laborers, or farm workers, whereas, only 18% of Whites were so employed. *Id.* at 30 (Table 13). Moreover, in 1970 the unemployment rate among Blacks was 8.2% compared to the rate of 4.5% among Whites. *Id.* at 20 (Table 8). This difference is even greater among teenagers. Black teenagers in 1970 had an unemployment rate of 29.1%, 2.2 times that among White teenagers. *Id.* at 26 (Table 11).

[18] Wells, *The Effects of Discrimination Upon Motivation and Achievement of Black Children in Urban Ghetto Schools*, 12 AMERICAN BEHAVIORAL SCIENTIST 26 (1968-69). Educators have reported for some time that Black children in early years tend to exhibit cynicism, disinterest and hostility toward schooling. Katz, *The Socialization of Academic Motivation in Minority Group Children*, NEBRASKA SYMPOSIUM ON MOTIVATION 133 (1967).

[19] The extent to which a student feels he has some control over his own destiny has been singled out as being the primary determinant of student achievement – stronger than all of the school influences combined. This is particularly the case with racial minorities. COLEMAN REPORT 23.

> If a child feels that his environment is capricious, or random, or beyond his ability to alter, then he may

[footnote continued]

ded student suffers a loss of status and reputation among his peers and is frequently branded as a troublemaker by his teachers. This stigma affects Blacks particularly, because teachers perceive Blacks as more rebellious than Whites. *See* p. 9, *supra.* [20]

The impact of a school suspension is greatly magnified when a record is made of the action of the school authorities, as is so often the case. A suspension record can severely handicap the student in obtaining employment or admission to college. Even if a student's suspension is not recorded, or if his record is not revealed by school officials to prospective employers or colleges to which he seeks admittance, the student may often be asked to disclose any record of a suspension. This record compounds the disadvantages to which Blacks are already subject in the job market. *See* pp.13-14, *supra.*

[footnote continued from preceding page]

> conclude that attempts to affect it are not worthwhile, and stop trying. Such a response to one's environment may be quite unconscious, but merely a general attitude that has developed through long experience. The particular relevance of this factor for groups that have been the subject of discrimination is that they have objectively had much less control of their environment than have members of the majority groups. This has been particularly true for Negroes. [*Id.* at 288.]

The Coleman Report's findings were that Blacks and other minority children exhibit a much lower sense of control of their environment than do Whites. In metropolitan areas, about twice the proportion of Blacks as of Whites tend to feel they have no control over their environment. Outside the metropolitan area, the rate is about three times greater. COLEMAN REPORT 289. However, when Blacks do believe they can control their environment, "their achievement is higher than that of Whites who lack that conviction." COLEMAN REPORT 23.

[20] The stigma which results from disciplinary action was a key factor in requiring a pre-expulsion hearing in *Dixon v. Alabama*

[footnote continued]

In sum, a Black child is especially dependent on a public education to increase his opportunities to earn a living, communicate, stimulate his curiosity and interests, and enjoy cultural and social benefits. A suspension of even a few days can have serious, harmful, and permanent consequences on his academic standing, his attitude, his reputation, his likelihood of graduating from high school, and his prospects for employment.

III.

GIVEN THE STRONG INTEREST OF STUDENTS IN GENERAL, BUT PARTICULARLY MINORITY STUDENTS, IN UNINTERRUPTED EDUCATION, AND THE LIMITED BENEFITS TO THE STATE OF SUMMARY ACTION, DUE PROCESS REQUIRES A HEARING PRIOR TO A SUSPENSION FROM SCHOOL.

A. The Right to a Public Education in Ohio is a Protected Liberty and Property Interest Embraced by the Fourteenth Amendment.

Appellants have urged this Court to hold that because the United States Constitution does not explicitly guarantee the right to public education, a state is free to ignore principles of procedural due process when the state grants or withdraws the benefits of its educational system. This argument flies in the face of numerous decisions of this Court, holding that the liberty and property interests protected by constitutional principles of due process need not themselves have an independent constitutional basis.

[footnote continued from preceding page]

State Board of Education, 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961). *See also Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971), where this Court stated:

> Where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.

See, e.g., Board of Regents v. Roth, 408 U.S. 564, 577 (1972); *Bell v. Burson*, 402 U.S. 535, 539 (1971); *Goldberg v. Kelly*, 397 U.S. 254, 262-63 (1970).

Appellees' Brief on the Merits ably documents that the right to a free public education in Ohio is guaranteed by state law. Ohio Const. Art. VI, §2; Ohio Rev. Code, §3313.48. [21] As an entitlement conferred by state constitution and statute, the right to attend the public schools of Ohio is, under the decisions of this Court, a "property" interest protected by the Due Process Clause of the Fourteenth Amendment. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Certainly, a free public education guaranteed by statute is one of the most important values dispensed by the government to the individual. The right to a public education is an essential prerequisite to earning a living and functioning in modern-day society. [22]

Statutory entitlements of a value to the individual no greater than that of public education have consistently been held by this Court to be protected property rights. *See, e.g., Perry v. Sindermann*, 408 U.S. 593, 603 (1972) (college teacher's understanding that continued employment would be provided absent "sufficient cause"); *Bell v. Burson*, 402 U.S. 535, 539 (1971) (continued possession of a driver's license); *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970) (statutory right to continue to receive welfare benefits). Moreover, in *Goldberg v. Kelly*, this Court, relying on *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S.

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[21] With the exception of South Carolina and Mississippi, every state has a constitutional provision directing the establishment of a system of free public schools. *San Antonio School District v. Rodriguez*, 411 U.S. 1, 112 n.69 (1973) (Marshall, J., dissenting).

[22] For the pecuniary advantages of public education, see p.14, *supra*.

930 (1961), recognized in dictum that the right to attend a public college is a protected property right within the meaning of the Fourteenth Amendment. 397 U.S., at 262 n.9.

Appellees in this case have a constitutionally protected liberty, as well as property, interest in continuing their public education free from arbitrary interference. This Court has consistently held that the right of a parent to educate his or her child,[23] and the implicit right of the child to be educated, are constitutionally protected liberties.[24] *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Pierce v. Society of Sisters*, 268 U.S. 510, 534 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

Appellants, in their Brief on the Merits, argue that even though the abstract right to learn is a "liberty" within the meaning of the Fourteenth Amendment, the right to a public education is not. The decisions of this Court do not support any such distinction. On the contrary, in each of the above-cited cases, the Court upheld the right

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[23] Although in some situations the rights of parents to educate their children and the rights of children to be educated may conflict, in this case they do not. School suspensions conflict with the rights of both the parent and child who desire that the child remain in school. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205 (1972), in which the Court refused to differentiate between a parent's right to educate his child and the child's substantive right to a public education because there was no evidence that the children expressed different desires from their parents concerning public school attendance.

[24] In determining whether an interest is a liberty, this Court has considered the criterion of whether the deprivation of the interest resulted in a stigma to the individual's reputation or foreclosed his opportunities. *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972). In practicality, a suspension from public school results in both. The consequences of a suspension are discussed *supra* at pp.10-16.

of the child to attend a particular school or study a particular course at the school. In *Meyer v. Nebraska*, the Court upheld the student's right to obtain instruction in foreign languages in public schools. In *Pierce v. Society of Sisters*, the Court upheld the right of the individual to attend a particular private school instead of a public school. In *Bolling v. Sharpe*, the Court upheld the right of school children in the District of Columbia to attend an integrated school system. Thus, the Court's opinions are clear that at least where the state has established a public school system, students have a constitutionally protected liberty to attend those schools. Moreover, even if one accepted Appellants' definition of liberty as the abstract right to educate oneself, the suspension of the students in the instant case deprived them of liberty because the Ohio public school system does not offer the suspended students any alternative means by which to educate themselves.[25] As a practical matter, high school students are dependent on some form of schooling for education; for this age group, unsupervised self-education is a meaningless substitute for formal schooling.

Appellants' reliance on *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973), for the proposition that public education is not a protected liberty or property within the meaning of the Due Process Clause of the Fourteenth Amendment is misplaced. As noted by the District Court in the instant case,

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[25] The mere fact that suspension is a temporary, rather than permanent, deprivation of the student's educational rights is irrelevant to the due process question. When a temporary deprivation results in real and irreparable harm, as here, it is settled that due process principles apply to the state's action. *Bell v. Burson*, 402 U.S. 535 (1971); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969).

> [t]he Supreme Court's holding that the right to an education is not explicitly or implicitly guaranteed by the Constitution does not affect the determination of whether it is a liberty or property which cannot be interfered with by the State without the protection of due procedural safeguards. [I]nterests included within the concepts of liberty and property are often rights created by the State which have no Constitutional status. [Appellants' Jurisdictional Statement at 57 (Appendix B).]

See also Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961), in which the Court said that the question of whether ". . . summarily denying Rachel Brawner access to the site of her former employment violated the requirements of the Due Process Clause of the Fifth Amendment . . . cannot be answered by easy assertion that, because she had no constitutional right to be there in the first place, she was not deprived of liberty or property by the Superintendent's action. 'One may not have a constitutional right to go to Baghdad, but the Government may not prohibit one from going there unless by means consonant with due process of law.' " *Id.* at 894; *accord, Wieman v. Updegraff*, 344 U.S. 183 (1952).

B. The Student's Interest in Being Protected from Arbitrary and Unfair School Suspension Clearly Outweighs the State's Interest in Summary Disciplinary Procedures.

We have demonstrated above that Fourteenth Amendment due process principles apply to this case, since suspensions from public school affect students' constitutionally protected liberty and property interests. Those principles demand that the state accord students a hearing *prior* to suspension, because the possibly irreparable injury

to the student caused by suspension far outweighs any interest which the state might have in summary suspension procedures. [26]

In determining whether in a given situation due process requires a hearing prior to the state's deprivation of a citizen's liberty or property, this Court traditionally has utilized a balancing test. The Court has weighed whether the state's interest in deferring or foregoing a hearing overcomes the individual's interest in being protected from arbitrary and possibly mistaken action. *See, e.g., Arnett v. Kennedy*, 42 U.S.L.W. 4513, 4531 (U.S., 1974) (Powell, J., concurring); *Goldberg v. Kelly*, 397 U.S. 254, 263-66 (1970).

Appellants' assertion that the state must provide a hearing only if the citizen will suffer "grievous loss" is unsupported by any decision of this Court. While Appellants are correct that some opinions have noted that grievous loss might follow arbitrary state action, in each case the Court cited the large potential loss as relevant to a balancing process, and not as an absolute threshold standard. *See Morrissey v. Brewer*, 408 U.S. 471 (1972); *Goldberg v. Kelly*, 397 U.S. 254 (1970). Indeed, in *Fuentes v. Shevin*, 407 U.S. 67 (1972), the Court sharply dismissed the argument that due process should attach only to a deprivation of "necessary" items. It said that to read *Goldberg v. Kelly* in such a manner would mark "a radical departure from established principles of procedural due process." 407 U.S., at 88.

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[26] Of course, a showing by the state of a *bona fide* emergency situation at the school might justify some departure from procedural regularity until the crisis had passed. Wright, *The Constitution on Campus*, 22 VAND. L. REV. 1027, 1074-75 (1969). No such situation has been alleged in the instant case, however.

Nevertheless, by whatever standard one chooses to measure loss, the harm of a suspension to a student, particularly a minority student, is in fact grievous. As discussed at pp. 10-16, *supra*, suspension can result in incalculable educational, as well as psychological, damage. This has been recognized by numerous lower courts which, like the court below, have required public schools to hold hearings prior to suspensions.[27] *See, e.g., Sullivan v. Houston Independent School District*, 475 F.2d 1071, 1072-73 n.3 (5th Cir.), *cert. denied*, 94 S. Ct. 461 (1973) (refusal to vacate injunction requiring notice and "formal hearing" for suspensions of more than three days); *Black Students v. Williams*, 470 F.2d 947 (5th Cir. 1972) (students must receive hearing prior to ten-day suspension); *Vail v. Board of Education*, 354 F. Supp. 592 (D.N.H. 1973) (consultation must precede any suspension and formal hearing must precede suspension for more than five days); *Givens v. Poe*, Civil No. 2615 (W.D.N.C., Nov. 1, 1972), *implementing* 346 F. Supp. 202 (W.D.N.C. 1972) (requiring for all suspensions of ten days or less written notice and hearing at which student can present witnesses); *Mills v. Board of Education*, 348 F. Supp. 866, 878 (D.D.C. 1972) (hearing ordered prior to suspension

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[27] The distinctions between the detrimental effects of an expulsion, an indefinite suspension, and a shorter suspension are distinctions of degree only, and due process protections are not dependent on the number of days of suspension. *Fuentes v. Shevin*, 407 U.S. 67, 86 (1972). On the other hand, there are lesser sanctions than suspensions, such as after-school detention and the award of demerits, which are so minor and have such minimal effect on the student's education and opportunities that a hearing may not be required. *See, e.g., Hagopian v. Knowlton*, 470 F.2d 201, 211 (2d Cir. 1972) (in which the court indicated in dictum that a hearing would not be required prior to an award of demerits provided that demerits did not accumulate to the point of endangering the student's enrollment).

for any period over two days); *Stricklin v. Regents of University of Wisconsin*, 297 F. Supp. 416 (W.D. Wis. 1969), *appeal dismissed*, 420 F.2d 1257 (7th Cir. 1970) (specification of charges, notice of hearing, and hearing must precede 13-day "interim" suspension); *Mello v. School Committee*, Civil No. 72-114 (D. Mass., Apr. 6, 1972) (court restrained any exclusion from school prior to adequate hearing).

Appellants assert that the interest of the schools in taking summary action to suspend a student is to preserve order and discipline and that it is not feasible to provide hearings on the merits of suspensions. Yet Appellants have failed to explain how, and to what extent, according hearings would interfere with the preservation of order and discipline,[28] and it is difficult to understand how providing hearings on school suspensions is less feasible than providing hearings prior to termination of welfare benefits, as required by *Goldberg v. Kelly*, 397 U.S. 254 (1970). The cost to the school system of providing hearings prior to suspension is minimal – slightly increased expense and demands on staff time.[29] In almost all cases, school officials can prevent any interruption of the educational process by holding hearings after school hours.[30]

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[28] The provision of fact-finding hearings prior to suspensions might actually aid in preserving order and discipline by isolating the students who are, in fact, the "troublemakers" rather than suspending the mistakenly accused.

[29] *See generally, Stanley v. Illinois*, 405 U.S. 645, 656 (1972) (states must bear the costs of providing procedural due process, since "the Constitution recognizes higher values than speed and efficiency").

[30] Amici have been advised that the Amicus Brief to be filed by the Children's Defense Fund will address itself in detail to the issue of cost to the school system of providing hearings

This Court has held, with regard to desegregation, that disruption in the schools could not justify depriving students of their constitutional rights. *Cooper v. Aaron*, 358 U.S. 1, 16 (1958). Interference with a student's right to uninterrupted education is valid only if the school authority sustains the burden of showing that it acted reasonably to prevent substantial disruption or material interference with school activities. *Tinker v. Des Moines School District*, 393 U.S. 503 (1969); *Crews v. Cloncs*, 432 F.2d 1259 (7th Cir. 1970). Moreover, even if the school system can show disruption or interference with school activities, it must also sustain the burden of demonstrating that it is unreasonably difficult to hold a hearing prior to a temporary suspension. *Stricklin v. Regents of University of Wisconsin*, 297 F. Supp. 416, 420 (W.D. Wis. 1969), *appeal dismissed*, 420 F.2d 1257 (7th Cir. 1970). In an emergency situation, the balance of interests might shift, so that the school system would be required to provide a hearing after the deprivation, but as early as possible. If the state sustains its burden of showing that

> . . . it is impossible or unreasonably difficult to accord the student a preliminary hearing prior to an interim suspension, procedural due process requires that he be provided such a preliminary hearing at the earliest practical time. [*Id.*; *accord*, *Pervis v. LaMarque Independent School District*, 466 F.2d 1054 (5th Cir. 1972).]

In determining when it is impossible or unreasonably difficult to provide a student with a hearing prior to a suspension, the balance should be struck in favor of providing the hearing, even if it is necessary to reduce the formality of the hearing to do so. As the interruption of the student's education and the collateral conse-

quences of the discipline become less severe and the burden to the school system in holding the hearing increases, the formality and procedural requirements of a hearing could be reduced. *See Board of Regents v. Roth*, 408 U.S. 564, 570 n.8 (1972). But the hearing accorded a suspended student never should be dispensed with altogether.

CONCLUSION

The issue in this case is two-fold: 1) whether due process requires any hearing on the merits of a suspension from public school for up to ten days; and 2) the timing of the hearing. The Court should be mindful that the resolution of these issues will have great impact, not only on a small group of students in Ohio, but on public school students throughout the country. The available evidence of disproportionate suspensions of Black students suggests that there is serious risk of racial discrimination in school disciplinary proceedings. A hearing prior to suspension is essential to guard against the risk of such arbitrary action.

Respectfully submitted,

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Supreme Court of the United States

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No. 73-898

NORVAL GOSS, *et al.*,

Appellants,

—v.—

EILEEN LOPEZ, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

BRIEF OF THE NATIONAL COMMITTEE FOR CITIZENS IN EDUCATION; THE NATIONAL EDUCATION ASSOCIATION; AND THE EDUCATION LAW CENTER, INC., AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-898

NORVAL GOSS, *et al.*,

Appellants,

—v.—

EILEEN LOPEZ, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

BRIEF OF THE NATIONAL COMMITTEE FOR CITIZENS IN EDUCATION; THE NATIONAL EDUCATION ASSOCIATION; AND THE EDUCATION LAW CENTER, INC., AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

CONSENT TO FILING

This Amicus brief is filed, pursuant to Supreme Court Rule 42(2), with the written consent of all parties to the case.

INTEREST OF *AMICI CURIAE*

National Committee for Citizens in Education. NCCE is a national public interest group in education with a broad based citizen membership. Its predecessor organization, the National Committee for Support of the Public Schools, was founded in 1962 by a group of distinguished Americans, including Harry S. Truman, Agnes B. Meyer, James B. Conant and Omar V. Bradley, to focus public attention on the financial needs of the schools. NCCE was reconstituted and renamed in 1973 to reflect its transformation to a mass membership organization committed to building an effective citizen voice in education.

NCCE seeks to rekindle the public interest in education, to increase citizen participation in education decisions, to redress the balance of control. NCCE is committed to public education as an essential institution of our democracy and serves as a mechanism for an informed public to speak out and act on the major education issues before the nation. Because it believes that basic rules for just consideration of educational controversies must be established, the National Committee supports the right of children who are to be suspended to have a hearing.

National Education Association. The NEA, founded in 1857 and chartered by a special act of Congress in 1906, is the nation's oldest and largest organization of educators. It currently has more than 1,400,000 members. The NEA's purposes, as set forth in its charter, are to "elevate the character and advance the interests in the profession of teaching and to promote the cause of education in the United States." To this end, the NEA is dedicated to the

protection of the constitutional rights of both teachers and students.

The specific question presented in this case is whether a public school may constitutionally suspend a student without notice, hearing, or any other procedural protection. NEA's code of student rights and responsibilities, produced in 1971 by a special task force selected for that purpose, provides detailed procedural rights for any student threatened with an expulsion or suspension for longer than one day. The decision of this Court will have a significant impact on the extent to which such procedural rights will be made available in public schools in the years ahead.

Education Law Center, Inc. The Education Law Center is a public interest law center, incorporated in 1973 as a New Jersey Not-for-Profit Corporation. The Center is primarily active in the States of New Jersey and Pennsylvania in helping parents and students to realize the promises of equal educational opportunity and quality education for all. To this end, the Center engages in litigation of cases with broad educational policy implications, and provides technical assistance to parent and student organizations, as well as other agencies.

As the only public interest law center dedicated exclusively to the education law field, the Education Law Center is vitally interested in the continuing role of the federal courts in this area. The Center is involved in many cases presenting both substantive and procedural aspects of school discipline, which, like this one, require that a balance be struck between the duty of the State to operate the schools and the constitutional rights of individual children.

STATUTE INVOLVED

Section 3313.66 of the Ohio Revised Code provides, in relevant part, that:

> "The superintendent of schools of a city or exempt village, the executive head of a local school district, or the principal of a public school may suspend a pupil from school for not more than ten days. . . . Such superintendant, executive head, or principal shall within twenty-four hours after the time of . . . suspension, notify the parent or guardian of the child, and the clerk of the board of education in writing of such . . . suspension including the reasons therefor . . . ."

Section 1010.04 of Columbus Public Schools Administrative Guide provides that:

> "Pupils may be suspended . . . from school in accordance with the provisions of Section 3313.66 of the Revised Code."

QUESTION PRESENTED

Does the due process clause of the Fourteenth Amendment to the United States Constitution prohibit a public school system from suspending students from school for one or more periods of up to ten days without any type of notice or hearing (a) prior to such suspension, where the student's alleged conduct does not present a threat of disrupting school affairs; or (b) promptly after the suspension is imposed, where it is believed that the student's alleged conduct does threaten such a disruption?

STATEMENT OF FACTS

The full factual background of the case and the opinion of the court below appear elsewhere. Nevertheless, in view of the contentions of the Appellants and the Amici supporting them, we believe it important to set out certain of the facts in some detail.

In February, 1971, a number of public schools in the City of Columbus, Ohio, were affected by racial disturbances. The precise cause of such disturbances does not appear from the record, but they seem to have stemmed from disputes involving Black History Week in a number of high schools. (A. 127). As a result, and purporting to act under Section 3313.66 of the Ohio Revised Code quoted above, the principals and assistant principals of Central and Marion-Franklin High Schools and McGuffey Junior High School summarily suspended a large number of black students—at least 75 at Central High School alone. (A. 120). All of the students received zeros for the work missed during their suspensions (A. 164-65); several of them were given punitive transfers as a result of their suspensions (A. 130, 151); and some of the students had permanent notations of their suspensions made in their school records (A. 219, 244, 256). None of the students were given the benefits of even the most rudimentary procedural protections. Some of them were never even told why they were suspended.

The suspensions of the four plaintiffs who testified at the trial appear to be typical:

Dwight Lopez. In February, 1971, Dwight Lopez was a student at Central High School. On the morning of February 26, 1971, he had a free study period in the lunch-

room. While he was there, some black students came in and started overturning tables. Lopez testified that he and several of his friends thereupon walked out of the lunchroom; that he took no part in the disruptive activities; and that he did not violate any school rule. (A. 128).

In view of the disruptions at the school, the school day was ended early and all students dismissed during the morning. Later in the day, while Lopez was at home, his parents received a phone call from the principal of Central High School notifying them that Lopez had been suspended. No reasons were given. (A. 128-29). In addition, a letter dated the same day was sent to Dwight's parents by the principal. It stated, *inter alia,* that there had been a "continued problem in school for several days and today a group of students disrupted our complete school program. Dwight was in the group . . . ." (A. 190). Lopez and his parents were instructed to appear at the Board of Education on March 8 for the limited purpose of discussing "Dwight's future educational plans." (A. 193). When they did so, however, they were unable to get into the building because several hundred persons conducting a protest of Board policies were blocking the entrances. (A. 124). Lopez and his parents attempted to reschedule the meeting, but the school officials were always unavailable. (A. 122). Lopez was never allowed to return to Central High and on March 24, 1971, he was transferred from Central to the Adult Day School. (A. 193-94).

It seems, but is not entirely clear from the record, that Lopez was suspended from school because he was thought to have participated in the disruption in the school cafeteria. As a result of his suspension, which in fact lasted nearly one month, he was transferred from Central High School to the Adult School. Despite the fact that Lopez

denied that he participated in any disruptive activity, he was never given any opportunity, either before or after the suspension, for a hearing on the merits of his suspension. Furthermore, there was obviously no emergency requiring Lopez to be removed from the school grounds since school had been let out for the day and he was at home when he was notified of his suspension.

Betty Crome. In March, 1971, Crome was a student at McGuffey Junior High School. On March 3, 1971, there were disturbances at school, and a number of students were blocking the halls and making it impossible for the students who wished to reach their assigned classes to do so. Crome testified that in order to avoid the disturbances she and a number of other students went onto the school playground. The principal appeared on the playground and told the students assembled there to go home. Crome then departed for home with other students. Linden McKinley High School was along her route and, as she stopped there on her way home, she was arrested by the Columbus police. No charges were ever filed and she was immediately released to her mother. (A. 131-33).

Later the same day, Crome's mother was informed by telephone that Crome was suspended from school. (A. 132-33). Shortly thereafter, Crome's mother received a form letter dated March 3, from the principal of McGuffey stating that "your son/daughter Betty J. Crome has been temporarily suspended from McGuffey Junior High." (A. 202). No reasons were given at that time, or at any other time, for the suspension, nor is there anything in the record in the present case which indicates why Crome was suspended. It does appear clear, however, that since she was not on the school grounds at the time she was informed of her suspension, there was obviously no emergency re-

quiring an immediate suspension to remove a disruptive influence.

Deborah Fox. In March, 1971, Deborah Fox was a tenth grade student at Marion-Franklin High School. She was suspended for twenty days and then subjected to a punitive transfer as a result of what were alleged to be her actions on March 10 and March 19, 1971. The underlying facts are in dispute. Fox testified that she did not do anything which violated any rule or regulation of the school; that she was suspended for two consecutive ten day periods by Mr. Kollmer, the Assistant Principal; that she was never given any reason for either suspension; and that Mr. Kollmer appeared emotionally upset during the day he first suspended her. (A. 148-51). Philip Fulton, the school Principal, gave contrary testimony at his deposition. Fulton stated that during the morning of March 10, Fox was disruptive, "loud and disrespectful" toward Mr. Kollmer, and that during the noon hour she was "still making negative comments" and told Kollmer that she "hated him." As a result of her "negative comments" during the noon hour, she was told to report to the administration office, and when she refused she was suspended. (A. 102-3). Kollmer wrote to Fox's parents stating that Fox had been suspended because she was "extremely defiant and disrespectful with the assistant Principal today." (A. 211).

Fulton testified that when the first suspension expired on March 19, 1971, and Fox returned to school with her parents for a conference, she repeated the same disrespectful attitude towards the Assistant Principal. (A. 104). Fox, on the other hand, testified that she and her parents were told about her second suspension immediately on their arrival for their meeting with the Assistant Principal on March 19, and that she made no disrespectful comments about the As-

sistant Principal. (A. 151). The letter of March 19 to Fox's parents from Kollmer, providing formal notice of the suspension, gives no reason for the suspension. (A. 212).

In any event, Fox was never allowed to return to Marion-Franklin and was given a punitive transfer to South High School on March 30, 1971. Despite the conflict in testimony, Fox was never given a hearing before or after her suspensions and transfer. In her permanent record appears the notation "3/15/71 suspended for student disruption." (A. 219).

Susan Cooper. In March, 1971, Susan Cooper was also a student at Marion-Franklin High School. On March 15, there was racial tension at Marion-Franklin. Cooper, pursuant to her mother's instructions, determined to leave the school grounds. She testified that she was unwilling to violate the school rules by leaving without an excuse, so she went to the attendance office to obtain official permission. There she talked to Kollmer who told her that she had to go to class. When she informed him that her mother had asked that she be allowed to go home if there were continuing tensions at the school, Kollmer told her "well, you are suspended anyway." (A. 138-39, 140-41). She then left the school, but she and her mother both returned to the school and waited to talk to Kollmer. He would not talk to them and ultimately they met briefly with Oscar Gill, another Assistant Principal. Gill told them that Cooper was suspended for ten days and that she could have a conference when she returned. (A. 141-42). The next day, Cooper's mother received a letter from Gill stating that she was suspended because she was "involved at the disturbance at school" and "showed a lack of respect for the principal." (A. 224). During the proceedings below, Fulton, the Principal of Marion-Franklin, stated in his deposition

that he had ordered Cooper to go to class, but that she refused and encouraged other students not to obey his order to go to class. (A. 110-11).

Prior to the commencement of this case, Cooper was never given a specific reason for her suspension. While she and her mother did speak briefly to the Assistant Principal upon her return to school, she was never given an opportunity to tell her side of the story. It is clear, however, that since Cooper was accused only of wanting to leave the school grounds to avoid the racial disturbances of March 15, there was no need to suspend her to remove any threat of disruption for which she was allegedly responsible.

While the precise factual details of the suspensions of the remaining plaintiffs, and of other students in Columbus, differ, there is no assertion that the defendants ever provided a hearing on the merits of the suspension to any suspended student. The lower court found as a fact that no such hearings were ever provided. (Jur. St. 64-65).

Many of those suspensions were made by administrative personnel under trying circumstances, where the administrators were beleaguered, if not, as the testimony indicated, actually emotionally upset. Mass suspensions under such conditions are hardly likely to reflect detached and unbiased judgments. The need for procedural protections under such circumstances is obvious. Yet, as noted, none of the students were ever—not before, not during, and not after the suspensions—given an opportunity to be heard. Indeed, many students were never given even the vaguest reason for their suspensions and in a number of other instances, the reasons given—such as "making negative comments"—hardly support suspensions at all.

Faced with what they not unreasonably regarded as unfair suspensions, the plaintiffs filed suit in the federal court seeking to have Section 3313.66 of the Ohio Revised Code declared unconstitutional insofar as it allows for suspensions with no procedural protections whatsoever. A three judge court was convened and a trial held. The undisputed testimony indicated that, in addition to the obvious hardships imposed upon students by a suspension—zeros for missed classwork, possible loss of credits, and the like (A. 164-65), the student is labeled a social deviant, with concomitant psychological harm, particularly where the student believes that his suspension was entirely unjustified. (A. 158-60, 172-76).

Based upon the record before it, the trial court concluded that Section 3313.66 of the Ohio Revised Code, and the procedures followed under that statute by the defendants, are violative of due process. (Jur. St. 65). The court held that informal procedures would be sufficient to satisfy the requirements of due process, but that such procedures must provide for written notice of the reasons for the suspension and an opportunity for the student to present a defense or an explanation of his or her conduct. The court held that such procedural protections must be accorded before the suspension is put into effect, unless the student's conduct is believed to be disruptive, in which case the hearing must be granted within three days after the suspension is effective. (Jur. St. 63-64). In view of the defendants' failure to follow minimally acceptable procedures in the present case, the court ordered all references to the suspensions involved in the present case deleted from the school records. (Jur. St. 65). From this holding, the defendants have appealed.

SUMMARY OF ARGUMENT

This Court has repeatedly concluded that education is of particular importance to children and to society as a whole, in part because of its singular relation to the continuance of our democratic institutions:

> "[Education] is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship." *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954).

See also *Wisconsin* v. *Yoder*, 406 U.S. 205, 213 (1972); *Meyer* v. *Nebraska*, 262 U.S. 390 (1923).

Students know that important lessons are learned from watching what is done by school personnel, not merely listening to what they say. Indeed, in pointing out the importance of public schools, this Court has stated that:

> "[T]hey are educating the young for citizenship. . . . [This] is reason for scrupulous protection of Constitutional freedoms of the individual [child] by the public schools, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 637 (1943).

Appellants and the Amici who support them would teach the children of this nation that our principles of government allow school authorities to suspend a student for substantial periods of time without giving the student a reason for the suspension or any opportunity to defend in even a rudimentary manner against the most egregious cases of mistake, bias, or overreaction by school authorities, even though serious personal consequences to the student may

follow. Indeed, Appellants would teach the nation's children that education is provided to serve the purposes of the State and the role of the student is merely incidental. (App. Br. 15).

Contrary to Appellants' position, however, constitutional rights do not stop at the schoolhouse door.

> "Quite to the contrary, '[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'" *Healy* v. *James,* 408 U.S. 169, 180 (1972); *Shelton* v. *Tucker,* 364 U.S. 479, 487 (1960).

Students, like all other members of our society, have a right to fair treatment as required by the Due Process Clause of the Fourteenth Amendment. When a student is suspended from a public school, the Due Process Clause mandates that he or she be given at least the minimal procedural protections ordered by the lower court.

ARGUMENT

THE COURT BELOW CORRECTLY HELD THAT SUSPENSION FROM SCHOOL WITHOUT NOTICE OR HEARING IS PROHIBITED BY THE DUE PROCESS CLAUSE

The Fourteenth Amendment provides in relevant part that no State shall

> "deprive any person of life, liberty, or property without due process of law . . . ."

The court below quite properly held that the plaintiffs' attendance at public school was an interest protected by the Due Process Clause. The court relied primarily on its con-

clusion that school attendance was embraced within the concept of liberty, but noted also that school attendance might well be considered a property interest. Applying the traditional principles of due process analysis, the court held that, with such rights involved, due process requires notice and an informal hearing prior to a suspension except in emergency situations, when notice and an informal hearing must be provided afterwards. The Appellants' practice, which provided no notice or hearing at any time or in any case, plainly meets no such test and is therefore unconstitutional.

I.

Plaintiffs' Uninterrupted Attendance at Public School Is an Interest Protected by the Due Process Clause

A. *Plaintiffs Have a Liberty Interest Within the Meaning of the Due Process Clause*

This Court's opinion in *Meyer* v. *Nebraska, supra,* held that

> "Without doubt, . . . [liberty] denotes not mere freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, . . . and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." 262 U.S. at 399.

See also *Board of Regents* v. *Roth,* 408 U.S. 564, 572 (1972).

Thus, in *Meyer* the Court held that a restraint on the teaching of foreign languages interfered with a protected liberty. Similarly, in *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925), the Court held that a state prohibition on a type of education (parochial schools) interfered with a

protected liberty. If a student's right to attend private school, or to learn a language, is a protected liberty, it would appear *a fortiori* that a student's right to attend public school at all must be a protected liberty.

Furthermore, this Court has held a number of times that where a charge imputing misconduct to a citizen is made, a protected liberty is involved:

> "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, [his liberty is involved]." *Wisconsin* v. *Constantineau*, 400 U.S. 433, 437 (1971).

See also *Board of Regents* v. *Roth*, *supra*, 408 U.S. at 573; *Wieman* v. *Updegraff*, 344 U.S. 183 (1952). We believe that without doubt the stigma which attaches from suspensions —discussed more fully at pages 19-20, below—has precisely the effect described by the Court in *Constantineau*. Thus, for this reason as well, a protected liberty is involved.

B. *Plaintiffs Have a Property Interest Within the Meaning of the Due Process Clause*

The Court's most recent analysis of the concept of property interests within the meaning of the due process clause is found in *Board of Regents* v. *Roth*, *supra*. There, the Court held that

> "To have a property interest in a benefit, a person clearly must have . . . a legitimate claim of entitlement to it. It is the purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. . . .
>
> Property rights, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules and understandings that stem from an independent source such as

> state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." 408 U.S. at 577.

See also *Arnett* v. *Kennedy*, 42 U.S.L.W. 4513, 4530 (decided April 16, 1974) (Powell, J. concurring).

Similarly, in *Perry* v. *Sindermann*, 408 U.S. 593 (1972), the Court held that property rights

> "are not limited by a few rigid, technical forms. Rather, 'property' denotes a broad range of interests that are secured by existing 'rules or understandings.' . . . A person's interest in a benefit . . . is a 'property' interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit. . . ." 408 U.S. at 601.

We think it clear that plaintiffs' interest in attending school is "property" as defined in *Roth* and *Sindermann*. The Ohio constitution since the Northwest Ordinance of 1787 has provided for a public school system, and present Ohio statutes not only establish such a system, but require that all children between the ages of 6 and 18 attend school. Ohio Revised Statutes §§ 3313.48, 3313.64, and 3321.01 *et seq.* Furthermore, the Ohio courts have held that a child has the right to attend public school. *Dornette* v. *Allais*, 76 Ohio App. 345, 63 N.E.2d 805 (1945). The property right of plaintiffs here is at least as strong as that of the welfare recipients in *Goldberg* v. *Kelly*, 397 U.S. 254 (1969); of the uninsured driver in *Bell* v. *Burson*, 402 U.S. 535 (1971); and of the untenured instructor in *Perry* v. *Sindermann, supra.*

C. *The Interest Invaded Is Substantial*

This Court has made it clear that due process applies wherever the protected interest invaded "cannot be characterized as *de minimis*." *Fuentes* v. *Shevin*, 407 U.S. 67, 90 n. 21 (1972); *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 342 (1969) (Harlan, J. concurring). The interests of the students involved here are plainly substantial.

1. *Interference with Education.* This court has correctly noted that "continuity of instruction [in public schools] is a significant and legitimate educational goal." *Cleveland Board of Education* v. *LaFleur*, —— U.S. ——, 94 S. Ct. 791, 797 (1974). Indeed, Appellants and their supporters make this point themselves with respect to the necessity of avoiding disruptions of school activities. (Ohio Amicus Br.[1] 13-14). But they fail to recognize that disruption of scholastic continuity is harmful not merely because it interferes with the school administrator's ease, but because it interferes with the student's opportunity to learn. In the present case, the facts are clear that the suspended students receive zeros for all work missed and have no opportunity to make up such work. (A. 164-65). And ten days is more than 10% of an entire school semester.

Appellants and their supporters claim that the effect of the suspensions on the plaintiffs' grades and education was minimal because, as a group, plaintiffs successfully completed their work during the semesters in which they were suspended. (Ohio Amicus Br. 11). This argument simply misses the point. First, a number of plaintiffs were not successful during the semesters involved. Plaintiff

[1] We thus refer to the Amicus brief filed in support of Appellants by the Buckeye Association of School Administrators, *et al.*

Dwight Lopez, for example, lost credits since he was "suspended" in March, 1971, and was not allowed to return until the next semester. More important, even those plaintiffs who did maintain reasonable grades despite their suspensions were forced to do so under a handicap. But for their suspensions, they might well have done better. Compare *Burke* v. *Ford*, 389 U.S. 320 (1967). In fact, Appellant Norval Goss himself admitted that a suspension could well have an adverse academic effect. (A. 166).

Moreover, it is the qualitative nature of the deprivation which is important, not merely the length of time involved:

> "The Fourteenth Amendment draws no bright lines around 3-day, 10-day or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause. While the length and consequent severity of the deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right . . . ." *Fuentes* v. *Shevin, supra*, 407 U.S. at 86.

See also *Sniadach* v. *Family Finance Corp., supra; Bell* v. *Burson, supra.*

2. *Maintenance of Permanent Records.* Even a short suspension has a permanent effect on the student because of the elaborate record keeping by the school system and the utilization of such records in future evaluation of the student. Thus, for example, Plaintiff Deborah Fox had entered in her records the notation "3/15/71 suspended for student disruption." (A. 219). Colleges rely on such information in determining whom to admit; teachers and school administrators rely on such information for recommendations, and in consideration of placement of students; and courts may even rely on such records for passing judg-

ment on children appearing in family court and in other juvenile proceedings. See *Hatter* v. *Los Angeles City High School District*, 452 F.2d 673 (9th Cir. 1971); *Vail* v. *Board of Education*, 354 F. Supp. 592 (D.N.H. 1973); W. Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U. Pa. L. Rev. 545, 579 n. 161 (1971). Furthermore, insofar as grades are affected by a suspension, that effect is also permanently bound into the student's records. *Shanley* v. *Northeast Independent School District*, 462 F.2d 960, 967 n. 4 (5th Cir. 1972) (noting that a one hour suspension as a result of which a student missed a final examination and flunked a course would be "quite critical"). Thus, the suspension may be relatively short-term, but its effects are not. The court below properly recognized this factor when it ordered the defendants to expunge from their records information about Plaintiffs' suspension.

3. *Stigma.* The stigma attaching from a suspension was the subject of uncontroverted testimony in the court below. Teachers and school administrators believe that the suspended student is a social deviant, expect the student to be a troublemaker in the future, and react to him or her accordingly. (A. 157, 173). Often, his or her family and friends are of the same view. (A. 158, 174). The psychologists who testified below, both experts in the field, concluded that every suspension stigmatizes a child. (A. 158-59, 173). And they both agreed that the effect was all the worse where the student had little perception of the reasons for the suspension, as was the case here. (A. 160, 176).

The lower courts have reached the same conclusion as to stigma. See, *e.g.*, *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150, 157 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961). Thus, as one lower court put it:

> "[S]uspension is a particularly humiliating punishment, evoking images of the public penitant of medieval Christendom and colonial Massachusetts, the outlaw of the American West, and the ostracized citizen of classical Athens. Suspension is an officially-sanctioned judgment that a student be for some period removed beyond the pale." *Sullivan* v. *Houston Independent School District*, 333 F. Supp. 1149, 1172 (S.D. Tex. 1971).

For this reason, too, the Plaintiffs' interest is substantial.

* * *

Appellants and the Amici who support them contend that education is entirely beyond the scope of the due process clause and no deprivation of education need be accompanied by any procedural safeguards. Every court to consider that proposition has flatly rejected it. See, *e.g.*, *Papish* v. *Board of Curators of the University of Missouri*, 410 U.S. 667 (1973); *Hatter* v. *Los Angeles City High School District, supra; Dixon* v. *Alabama State Board of Education, supra.*

The Appellants seek to avoid this overwhelming weight of authority by arguing that because this Court held in *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973), that education is not a "fundamental interest" for purposes of the equal protection clause, deprivation of education is entitled to no due process protection at all. That argument is not merely incorrect, it is downright bizarre. A determination of fundamentality for equal protection purposes depends upon whether the interest is "explicitly or implicitly guaranteed by the Constitution" and is relevant only to whether a classification involving that interest must survive a compelling state interest or merely a rational basis test. *Rodriguez, supra,*

411 U.S. at 33-34.[2] Whether an interest is fundamental or not is plainly irrelevant to due process considerations, for, as noted above, the Due Process Clause applies to statutorily created, as well as constitutionally created, rights. *Board of Regents* v. *Roth, supra,* 408 U.S. at 577. In fact, this Court so indicated in *Rodriguez* itself. See 411 U.S. at 33 n. 72. For as the Court there pointed out, in *Dandridge* v. *Williams,* 397 U.S. 471 (1970), and *Goldberg* v. *Kelly,* 397 U.S. 254 (1970), the Court held that welfare is not a fundamental right for equal protection purposes, but that it is a protected property interest for due process purposes. See also *Bell* v. *Burson, supra,* requiring due process hearings for the deprivation of a drivers license, hardly a "fundamental interest"; and *Kister* v. *Ohio Board of Regents,* 365 F. Supp. 27, 39 (S.D. Ohio 1973), *aff'd mem.,* —— U.S. ——, 94 S. Ct. 855 (1974), where the court held that "while education is not a fundamental right, that does not mean the university may arbitrarily dismiss a student without due process of law."

We think it clear that due process protections attach to educational deprivations of the sort involved here.

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[2] In *Rodriguez,* this Court seriously considered the constitutionality of the Texas statute under the rational basis test. The Court ultimately determined that the Texas scheme "was not so irrational as to be invidiously discriminatory." Nevertheless, its approach to the challenge clearly demonstrates that the absence of a fundamental interest, even in an equal protection case, is hardly tantamount to an absence of constitutional protection.

II.

The Procedures Ordered by the Lower Court Are Required to Meet Minimum Due Process Standards

Once it is determined that a non *de minimis* protected interest is involved, it is evident that the Ohio statute here in question and the Appellants' *modus operandi*, which provide no process at all, are unconstitutional. It remains to be considered only what process is due. *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972); *Arnett* v. *Kennedy, supra*, 42 U.S.L.W. at 4531 (Powell, J., concurring), 4524 (Marshall, J., dissenting).

We start, as did the court below, with this Court's opinion, in *Board of Regents* v. *Roth, supra*:

> "Before a person is deprived of a protected interest, he must be afforded opportunity for some kind of a hearing, 'except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event.' *Boddie* v. *Connecticut*, 401 U.S. 371, 379. 'While [m]any controversies have raged about . . . the Due Process Clause, . . . it is fundamental that except in emergency situations . . . due process requires that when a State seeks . . . [to deprive a person of a protected interest] . . . it must afford 'notice and opportunity for hearing appropriate to the nature of the case' *before* the . . . [deprivation] becomes effective.' *Bell* v. *Burson*, 402 U.S. 535, 542." 408 U.S. at 570 n. 7.

See also *Arnett* v. *Kennedy, supra*, at 4531 (Powell, J., concurring), 4524 (Marshall, J., dissenting); *Fuentes* v. *Shevin*, 407 U.S. 67 (1972); *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969); *Armstrong* v. *Manzo*, 380 U.S. 545 (1965).

The students' interests have been set out in some detail above. They are, in brief, to continue their educations uninterrupted, without unnecessarily and unfairly missing school work, with the consequent adverse educational effects in grades and credits; to avoid being stigmatized unfairly and incorrectly as troublemakers, with the resulting psychological and educational damage; and to maintain their permanent educational files and records free of entries which improperly indicate for future reference that the student engaged in misconduct and was suspended, with possibly permanent damage to the student's ability to obtain admission to college, a good job, and the like.

The interest of the City of Columbus in suspending students from school without procedural protections is, quite frankly, unclear to us. We would have thought, for the reasons set forth in the Summary of Argument, *supra*, that in our society school administrators have every interest in demonstrating to their students that democratic procedures work, and work well in protecting the rights of citizens.[3] The present Amici, who themselves are intimately involved in school matters, are certainly of that view. See,

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[3] See W. Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U. Pa. L. Rev. 545, 574-75 (1971):

> "[T]he school has an interest in providing fair procedures. Although procedural due process is only one educational value of many, its importance is especially great at a time when serious questions are being raised about the validity of what the school offers. From a more pragmatic point of view, providing fair procedures for school discipline may actually eliminate the distracting effect of disciplinary proceedings that do not give the student a fair opportunity to defend himself against the authorities or that leave students with a feeling that they have been dealt with unfairly. . . . The school has no legitimate interest in disciplining a student who has not been given a minimal opportunity to establish his innocence or the inappropriateness of a particular sanction."

e.g., National Education Association, Code of Student Rights and Responsibilities (1971).

That does not mean that Appellants have no interest in avoiding unnecessarily formal procedures. The court below held, and Amici agree, that school officials have an interest in controlling discipline and in avoiding disruption by both unruly students and procedures which require too much formality. The lower court's decision fully accommodated the Appellants' interests in its holding that (a) a hearing must normally be provided before suspension, but where the student involved is threatening to disrupt the academic atmosphere of the school, or endangering property or personnel, the hearing might be held anytime within three days of the suspension; (b) the hearing need not allow counsel or follow formal rules, but need merely provide the student with statement(s) of what he or she has allegedly done and give the student an opportunity to submit his or her own statement and statements of others in his or her defense; and (c) the administrator making the suspension decision tell the student reasonably promptly what decision has been made and why.

These requirements are truly minimal. Prior decisions of this court have uniformly held that where factual issues must be resolved, due process requires an evidentiary hearing with and unbiased trier of fact and the right to present evidence and confront and cross-examine accusers. Such protections can be provided in even the most informal proceedings. *Morrissey* v. *Brewer, supra; Goldberg* v. *Kelly, supra.* The opinion of the court below, of course, does not go even this far.[4]

Yet the Appellants and the Amici who support them would reject even the minimal protections ordered by the

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[4] Since Appellees herein have not cross-appealed, there is no need for this Court to consider the adequacy of the remedy provided by the lower court.

court below. In support of this result, they advance a number of wholly unpersuasive arguments:

1. First they maintain that they "are committed to the improvement of education in the public schools," and that such improvement can result only from "a process of experimentation and innovation involving the utilization" of suspensions as "educational tools." (Ohio Amicus Br. 1). Suspension as an "educational tool" hardly seems a good faith "improvement in the educational process," but in any case, what is involved here is not a school administration's right to suspend students in appropriate cases, but only its right to do so without a hearing.

2. Next they claim that "flexibility" and "efficiency" require that schools must use summary procedures in all cases. They claim that any type of a hearing will always have disruptive effects on the conduct of school programs and submit copious statistics as to the large number of suspensions yearly in Ohio schools. (Ohio Amicus Br. 12-13, 23-24). This argument simply misstates the case. Many, if not a majority, of large and small school districts around the country have been operating for years on a prior hearing basis without significant problems. Such districts include Houston, Texas, Pittsburgh, Pennsylvania, and Seattle, Washington. *Sullivan v. Houston Independent School District*, 333 F. Supp. 1149 (S.D. Tex. 1971); Pittsburgh Board of Public Education, Procedures for Dealing with Student Misconduct (1971); Seattle School Board, Statement of Rights and Responsibilities (1970).[5] See gen-

[5] The Seattle regulations guarantee a full due process hearing and go much further than the minimum requirements ordered by the court below:

"Procedural Rules and Regulations for the School Community.

The constitutional rights of individuals assure the protection of due process in law; therefore, this system of constitutionally

erally P. Lines, *The Case Against Short Suspensions*, Inequality in Education, No. 12, p. 39 (July, 1972). Furthermore, the procedures required by the Court below were

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and legally sound procedures is developed with regard to the administration of discipline in the Seattle Public Schools:

(1) The hallmark of the exercise of disciplinary authority shall be fairness.

(2) Every effort shall be made by administrators and faculty members to resolve problems through effective utilization of school district resources in cooperation with the student and his parent or guardian.

(3) A student must be given an opportunity for a hearing if he or his parent or guardian indicate the desire for one. A hearing shall be held to allow the student and his parent or guardian to contest the facts which may lead to disciplinary action, or to contest the appropriateness of the sanction imposed by a disciplinary authority, or if the student and his parent or guardian allege prejudice or unfairness on the part of the school district official responsible for the discipline.

(4) The hearing authority may request the student and parent or guardian to attempt conciliation first, but if the student and parent or guardian decline this request, the hearing authority shall schedule the hearing as soon as possible.

(5) The following procedural guidelines will govern the hearing:

a. Written notice of charges against a student shall be supplied to the student and his parent or guardian.

b. Parent or guardian shall be present at the hearing.

c. The student, parent or guardian may be represented by legal counsel.

d. The student shall be given an opportunity to give his version of the facts and their implications. He should be allowed to offer the testimony of other witnesses and other evidence.

e. The student shall be allowed to observe all evidence offered against him. In addition he shall be allowed to question any witness.

f. The hearing shall be conducted by an impartial hearing authority who shall make his determination solely upon the evidence presented at the hearing.

g. A record shall be kept of the hearing.

designed to minimize disruption by allowing statements in written form and by limiting the formality required.

That school systems in Houston and Seattle, for example, which are much larger than that of Columbus, can successfully operate under a prior hearing system clearly demonstrates the irrelevance of the statistics submitted by Appellants' supporters. Indeed, the large numbers submitted may well demonstrate nothing more than that under the Ohio statute here at issue school administrators use the "educational tool" of suspension much too freely.[6] Indeed, numerous studies have shown that, where adequate procedures are not followed, suspensions are too often abusively used.[7] C. Wright, *The Constitution on Campus*, 22 VAND. L. REV. 1027, 1059-60 (1969).

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h. The hearing authority shall state within a reasonable time after the hearing his findings as to whether or not the student charged is guilty of the conduct charged and his decision, if any, as to disciplinary action.

i. The findings of the hearing authority shall be reduced to writing and sent to the student and his parent or guardian.

j. The student and his parent or guardian shall be made aware of their right to appeal the decision of the hearing authority to the appropriate appellate authority."

Seattle School Board, Statement of Rights and Responsibilities (1970), reprinted in Administrator's Notebook, Vol. XX, No. 6, pp. 3-4 (February, 1972).

[6] Dayton, Ohio, for example, nearly halved the number of suspensions (and, incidentally, reduced the number of expulsions sixfold) by revising its procedures under a federal program. Education USA, Vol. 16, No. 25, p. 134 (February 18, 1974).

[7] For example, about twice as many black students seem to be summarily suspended from school as whites. Southern Regional Council, The Student Pushout: Victims of Continued Resistance to Desegregation 4-6 (1973); Report of the Senate Select Comm. on Equal Educational Opportunity, "Toward Equal Educational Opportunity," 92d Cong., 2d Sess. 140 (1972). Similarly, suspen-

Moreover, "flexibility" and "efficiency," while not irrelevant, are not the end point of any constitutional analysis. As this Court held in *Stanley* v. *Illinois*, 405 U.S. 645 (1972):

> "The establishment of prompt and efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from . . . overbearing concern for efficacy . . . ." 405 U.S. at 656.

3. Finally, and at greatest length, Appellants, *et al.*, argue that student disruptions always create an emergency so that a prior hearing is not required. (Ohio Amicus Br. 14-15). Initially, it should be noted that where there is a disruption or threat to order, the lower court decision allows the hearing to be held after the suspension takes effect. But it is just not true that students are only suspended in emergency situations. The facts in this case plainly demonstrate otherwise. For instance, Plaintiff Dwight Lopez was suspended when he was at home after school had been let out for the weekend. Plaintiff Betty Crome was also

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sions of students for exercise of their First Amendment rights have been a continuing problem. The facts in this case show that one of the plaintiffs, Susan Cooper, was suspended for making "negative comments," a right one might have thought enjoyed First Amendment protection and which might not so easily have been ignored with proper procedural protections. See *Tinker* v. *Des Moines Independent School District*, 393 U.S. 503 (1969); *Papish* v. *Board of Curators of the University of Missouri, supra; Shanley* v. *Northeast Independent School District, supra.*

suspended while at home. Plaintiff Susan Cooper was suspended because she wanted to leave the school grounds. It is hard to see what "emergency" necessitated immediate action in these cases. There are, no doubt, many other similar non-emergency cases among the suspensions which have taken place under the Ohio statute here in question.

In our view, the procedures ordered by the lower court are the very minimum consistent with the requirements of due process.

CONCLUSION

Appellants and their supporters strenuously maintain that the Ohio statute should be held to be constitutional because due process does not require a prior hearing. That contention is simply not consistent with this Court's rulings on due process. Moreover, the Appellants conveniently ignore the fact that the statute and their own standard operating procedure involved here does not provide for any form of hearing *ever—neither before nor after* the suspension. No case has ever upheld the deprivation of a pro-

tected right without some form of hearing at some time. Yet that is precisely what Appellants would have this Court do. The lower court properly rejected Appellants' contentions, and its decision should be affirmed.

Respectfully submitted,

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IN THE

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OCTOBER TERM, 1973

No. 73-898

NORVAL GOSS, ET AL., *Appellants,*

v.

EILEEN LOPEZ, ET AL., *Appellees.*

On Appeal from the United States District Court for the Southern District of Ohio

BRIEF AMICI CURIAE

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BRIEF AMICI CURIAE

For the Children's Defense Fund of the Washington Research Project, Inc. and the American Friends Service Committee.

INTRODUCTION

We present this brief in support of the Appellees with the consent of counsel for both the Appellants and the Appellees.

We rely on the Appellees' treatment of this Court's jurisdiction and of the constitutional and statutory provisions involved.

The opinion of the District Court, in this case, is now reported as *Lopez* v. *Williams*, 372 F.Supp. 1279 (S.D. Ohio 1973).

QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment requires public school officials, who "suspend" students as punishment for alleged misconduct, to provide an opportunity for a fair hearing to determine the truth of the allegations on which the "suspension" is based?

INTEREST OF AMICI

The Children's Defense Fund was established in 1972 as part of the Washington Research Project, Inc. It is committed to achieving systematic reforms on behalf of the Nation's children. During the last year, it has conducted a major study of the exclusion of children from public schools. Its staff, and staff of the American Friends Service Committee, visited over 8,000 households to determine how many children are out of school and why; it has discovered that millions of children are now not in school and that a major reason is the extraordinarily frequent and casual use of disciplinary "suspensions" by school officials. The Children's Defense Fund has concluded, therefore, that the massive problem of children out of school will not be solved until the "suspension" process in America's schools is corrected to screen out countless arbitrary "suspensions" and to ensure fair treatment of its victims. In the late Summer of 1974, the Children's Defense Fund will publish the findings and conclusions of its study in a book to be entitled *Children Out of School in America*.

The American Friends Service Committee has, since 1917, engaged in religious, charitable, social, philanthropic and relief work on behalf of the several branches and divisions of the Religious Society of Friends in America. The American Friends Service Committee, though it cannot speak for all Friends, has a vital interest in this litigation because of Friends' belief in the equality of all human beings in the sight of God. This testimony has led the American Friends Service Committee to commit a significant portion of its resources to deal with those aspects of our social order which result in exclusion and denial of rights. Major attention has been given for the last two decades to aspects of school systems which diminish the opportunity of any student to acquire adequate education. Specifically, our Southeastern Public Education Program is directly concerned with the suspension of students from school. We work with students, parents, teachers and school administrators in the matter. We have carried out investigatory work on the subject of suspensions and have developed materials to broaden citizen understanding of the critical issues involved.

STATEMENT OF THE CASE

This is a class action. The Appellees are nine children and nine parents. They represent a class of thousands of children: children "suspended" from the public schools of Columbus, Ohio between February 1971 and August 1973.

The children suffered the most serious type of deprivation that a public school system can impose. They were deprived of schooling. An official believed that they had done some misdeed; he ordered them to get

out of school; he ordered them to stay out for up to two weeks. School classes went on without them; the schools did not allow them to continue their studies; the schools did not permit them to make up what they missed; the schools took no responsibility for them while away. This, in current jargon, was a "suspension".

The crux of this case is not *that* the children were "suspended". It is *how* they were "suspended". They were denied any opportunity—before, during, or after "suspension"—to persuade anyone that their removal from school was mistaken.

A.

The power of Ohio public school officials to throw children out of school is set forth in Section 3313.66 of the Ohio Revised Code. It empowers them to act in two ways: (1) a school superintendent or executive may "expel" a child for an indefinite period not to extend beyond the current semester; or (2) a school superintendent, executive or principal may "suspend a pupil from school for not more than ten [school] days." There is a notice provision. It applies to both "expulsion" and "suspension". When a child is "expelled" or "suspended", school officials must provide notice "in writing of such expulsion or suspension including the reasons therefor" within twenty-four hours. The Code, however, distinguishes between "expulsion" and "suspension" when it comes to a hearing. When a child is "expelled", he or his parent is entitled to a hearing—not a prior hearing, not a prompt hearing, but an eventual hearing—before the Board of Education. But, when a child is "suspended", there is to be no hearing at all.

The Code, therefore, grants virtually unqualified "suspension" power to school officials: An official may wait until he has already thrown out a child to give a reason. Even then, he need not listen to any suggestion that he was mistaken about the facts, or that "suspension" should not apply in the particular case.

The statute, by the same token, leaves "suspended" children and their parents helpless: They are allowed no opportunity to be heard, by anyone, at any time.

B.

Presumably, under State law, local school authorities are free to supplement the procedure (or lack of procedure) set forth in the Code. The school authorities of Columbus, then, had the option to require notice that is prompt and to mandate a hearing that is both prompt and fair.

Yet the Administrative Guide of the Columbus Public Schools does no more than adopt the provisions of the Code. Its Section 1010.04 simply states: "Pupils may be suspended or expelled from school in accordance with the provision of Section 3313.66 of the Revised Code." Thus it, too, empowers school officials to "suspend" children unilaterally, with notice of reasons delayed, and with no hearing addressed to those reasons.

C.

The "suspension" practice of Columbus school officials followed, in the main, the procedure marked out by the State Code and the local Administrative Guide. They did modify it to some extent. "Suspension", however, remained—in practice, as on the statute books—a thoroughly unilateral process.

Evidence, in the record, on "suspension" practice breaks down into three categories: (1) administrative memoranda issued by the Columbus Department of Pupil Personnel, (2) a description of the "usual" process used during the time at issue here, and (3) testimony about the actual process used to "suspend" the Appellees in the Spring of 1971. The particular facts of the Appellees' own "suspensions" are not the only relevant evidence. This is a class action that includes children "suspended" from the Columbus public schools over a two-and-one-half year period. Thus general "suspension" practice, common to the whole class, is of central importance.

(1) In the two-and-one-half years covered by this case, the Columbus Department of Pupil Personnel issued two memoranda on "suspensions". They were addressed to school principals, the officials empowered by the Code to impose "suspensions". They outlined the process that should be used to remove children from the schools.

The first of them, issued in August 1973, advised principals to follow the procedure set forth in the Code and Administrative Guide. It also added two provisions. It advised that, at the time of the "suspension", the principal should notify the child of the "exact reason and the term of the suspension." Also, the memorandum advised that, at some unspecified later time, the principal should "be available for a conference if one is requested by the parent."[1] These two provisions served a narrow purpose.

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[1] The memorandum is quoted in full in the opinion of the District Court. *Lopez* v. *Williams*, 372 F.Supp. 1279, 1282 n. 1 (S.D. Ohio 1973).

The purpose of the provision for prompt notice was to communicate, quickly, the basis for the "suspension". It was to make the principal reveal, quickly, what he thought the child had done. But it left the child still with no chance to answer. It simply facilitated one-way communication.

The purpose of the provision for a post-"suspension" conference was not to open up the basis for the "suspension" to critical examination. The District Court found: "The conference . . . was not a fact-finding hearing, but rehabilitative in nature."[2] At the conference, the only item on the agenda was the child's future program. *See* pages 11-12 below. It was not meant to allow anyone to show that the "suspension" —and the supposed need for "rehabilitation"—rested on a mistake.

When the Department next issued a memorandum, in February 1973, it did not add to these provisions. Rather, it left out one of them. It left out even the provision for a conference between the principal and the parent.[3]

To be sure—only one week before trial of this case—the Department issued a new memorandum. In July 1973, for the first time, it went a bit, though not far, beyond mere one-sided reforms: It advised that, before removing a child from school, a principal should discuss the alleged offense with him; and it provided that if "any suspension is subsequently found to be erroneous, all reference to the suspension shall be expunged

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[2] *Id.* at 1302. *See id.* at 1283.

[3] *Id.* at 1282-1283 n. 1.

from the school's records."[4] But this new memorandum, whatever it might eventually mean in practice, is *irrelevant* here.

The District Court ruled that the class action, at issue here, could not extend to this proposed change in procedure: "Plaintiffs have not engaged in conduct which would subject them to the newly adopted suspension procedures. Thus, they cannot sue on their own behalf or on the behalf of others for relief from the newly adopted suspension procedures. See *Hall* v. *Beals*, 396 U.S. 45, 48-49."[5] Children, after August 1973, might possibly be treated somewhat more fairly; but that hardly affects the validity of "suspensions" before that time or the need for expungement of those "suspensions" from the record.[6]

(2) Thus, during the time span at issue here, the "suspension" process mandated by the Code and the Administrative Guide was preserved basically intact by the central school authorities: There still was to be no hearing of any kind at any time. That left "suspen-

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[4] *Id.* at 1283-1284.

[5] *Id.* at 1296 n. 11. The Appellants do not now challenge the definition of the class by the District Court.

[6] The District Court said: "Defendants argue that the suspension guidelines adopted by the Department of Pupil Personnel on July 10, 1973 moot the constitutional question presented. . . . The new guidelines have no impact upon the constitutional claims of the named plaintiffs or any member of the class they represent who was suspended prior to July 10, 1973. If their suspensions were imposed without due process of law, they have a right to a declaration that the suspension procedure was unconstitutional and to the expunction of any reference to the suspension from all records maintained by the Columbus Public Schools. There is a present, live controversy, and not a moot action. *See*, Golden v. Zwickler, 394 U.S. 103 . . . (1969)." *Id.* at 1296.

sion" procedures, in practice, to individual school principals.

Their power was formidable. The record includes a lengthy deposition of Phillip Fulton, principal of a Columbus high school, describing the "usual" procedure that principals used to "suspend" children. It indicates that, on occasion, principals may have supplemented the official "suspension" process on their own: They sometimes "discussed" the "suspension" with the child before removing him from school, and they sometimes held a "conference" with the parent afterwards. (App. 111-114.) But, in practice, the process remained unilateral.

The permissible grounds for "suspension" were not "spelled out in any single system or document." But the schools did "have school rules." These, along with the "rules and regulations of the Board of Education—State, Federal, City law—could all be areas that could be grounds for suspension." The students were "apprised of school rules" through "school assemblies, announcements on the P.A. system, school handbooks, school bulletins, memos sent to parents, council meetings." (App. 66-67, 105.)

"Suspensions" generally were based on the word of a teacher, alleging that a pupil had committed a rule violation not witnessed by the official with authority to remove the child from school:

> "The majority of times the incident does not occur with an administrator. It occurs in a situation where a teacher refers it to administration."

(App. 112.) Despite the fact that the Code and the Administrative Guide give "suspension" power only

to a principal, it would often be someone other than the principal who would evaluate the teacher's allegations:

> "It would depend upon who was available, who the teacher may refer the incident to. It can be one or the other of the administrators."

(App. 112.) (*See* App. 118.)

At that point, the administrator would often call in the pupil. The administrator, according to Mr. Fulton, would often listen to what the child had to say. But, if the child and the teacher disagreed as to what had happened, *the administrator would automatically believe the teacher:*

> "If there is a large discrepancy where the student would deny [the teacher's version of events] and the teacher would confirm it, then we would react upon this information according to what the teacher tells us."

(App. 112-113.) Any preliminary "discussion" with the pupil was, therefore, *pro forma.* His word was presumed noncredible. The presumption, apparently, was irrebuttable:

> "Q. Now, the procedure that you were describing there is the procedure you used in ordinary situations? I mean, they are used not when the school is going up in flames, but in an ordinary suspension type of situation? A. Right.
>
> Q. Now, you mentioned that if the student contested what the teacher said, the teacher then would be called in, or occasionally the teacher would be called in? A. Right.
>
> Q. What would happen if there was still dispute? A. Then the teacher's word would be the deciding factor."

(App. 113.)

Thus the one-sidedness of the process, inherent in the Ohio Code and the Columbus Administrative Guide, was routine. Even if a child had notice of the reason for his "suspension", even if he had a chance to speak up for himself, he ran up against an irrebuttable presumption that the allegations against him were true. The child might be allowed to speak. But what he said would not be considered. This was not a "hearing":[7] The validity of the "suspension" was, in reality, not open to question at all.

Often, according to Mr. Fulton, a later "conference" would also be held with the child's parent. But it, too, was far from a hearing on the underlying facts of the "suspension". Indeed, those facts were not even discussed. The official version of events was simply assumed to be true:

> "Q. Traditionally, what is discussed at these conferences? A. The problem, the individual, we talk about their school record. We get their entire school record. We talk about their academic problems if they exist. We talk about their potential. We talk about their goals. It is a conference to remedy the problem and you try to find a solution so that the student is successful in his schooling.
>
> "Q. Is it a conference to verify the facts supporting this suspension, or is it more a conference to determine future placement? A. No, because almost always placement is right back where they are. It is to communicate with the parent, as part of my responsibility, the problem that exists and ask for their help. We inform them and then find out what directions we can take that will eliminate the need for further problems."

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[7] *See* page 49 below.

(App. 114.) At the "conference", the allegations against the child, on which the "suspension" was based, were not to be contested; they were not to be questioned; they were not even to be discussed.

(3) The "suspensions" of the Appellees in the Spring of 1971 revealed this process at work. The circumstances were somewhat unusual: circumstances that made mistaken "suspensions" particularly likely and time for prior consideration particularly short. But the "suspension" process was entirely "usual": It was entirely unilateral.

The Appellees' "suspensions" took place during a time of some unrest in Columbus secondary schools following "Black History Week." On occasion, many pupils left their classrooms, and many pupils participated in large (overwhelmingly non-violent) confrontations between blacks and whites. (App. 85-111, 127-128, 131-132, 138-140.) Others did not. The Appellees—who are black—insist that they did not join in the confrontations. (App. 128, 132, 137-139, 149.) Yet they were among the students singled out to be removed from school.

The Appellees' "suspensions" were not identical in every respect. In some cases, a principal thought he had seen them misbehave. In other cases, he relied on the views of other administrators or teachers. (App. 103, 106, 107, 109, 111-112.) Some Appellees were thrown out on the spur of the moment during the school day. (App. 140, 148.) Others were "suspended" only after they, and all other students, had returned home for the day. (App. 128-129, 133.) Some were told what they were alleged to have done. Most were not.

(App. 127, 129, 133, 138, 142, 148-149.) The variations were legion.

But one fact united every case: School officials allowed no Appellee an opportunity, however brief, however informal, to contest allegations that were mistaken and to have their views fairly considered. (App. 129-130, 133, 142, 150.) The record is clear on this point.

Later, the Appellees' parents received short letters informing them of the "suspensions". Some of these letters gave no reason whatever for the "suspensions". Others did. One simply said that the pupil had "disrupted . . . the school program." Another said that the pupil had been "defiant and disrespectful." (App. 48, 53.)

In some cases, the student's parent was asked to come to the school, after the full "suspension" was over, for a conference. But, following usual practice, the conference was not to review the underlying facts of the "suspensions". It was simply to discuss the child's future program. (App. 146-147, 151.) The record reveals *no* instance in which the basis of the "suspension" was ever afterward open to contest—not promptly after the child was sent away, not after the full period of the "suspension", not to this day.

In this manner, the Appellees were deprived of schooling. One of them was kept out of school for one week. (App. 135.) The others were "suspended" for two weeks. One was "suspended" twice, for a total of four weeks. (App. 151.) One, who did not appear with his parents for the later conference, was excluded from school for a longer period—one month. (App. 126,

129-130.) Some were never allowed to return to their school, but were transferred to other schools or night schools. (App. 122, 126, 151.)

The Appellees, then fell victim to the Columbus "suspension" process at an atypical time. But their treatment was entirely typical. They never had a chance to persuade anyone that their "suspensions" were mistaken. Neither did any other Columbus public school pupil, in any circumstances, at this time.

D.

The impact on the Appellees, and their class, of "suspension" from the Columbus public schools was brought out at trial. They were away from school—at home or on the streets—for periods from one week to a month. This was impact enough. The record, however, shows that there were also collateral consequences.

Missing classes for a week, two weeks or a month was academically harmful. The record shows that "suspended" children automatically received "zeros" for every day missed. (App. 147, 153, 165, 184.) But the impact on their grades was only one index. Their learning process was interrupted. (App. 184.) They were often not allowed to take their books away with them. (App. 142.) They were never given a chance to make up the studies that had gone on without them. (App. 123, 136, 143, 152.) The Columbus Director of Pupil Personnel testified that this plainly could have "negative" educational effects. (App. 165-166.)

Those who were eventually transferred to a different school, because of their "suspensions", faced added difficulties. One testified: "I never did catch up fully to what I did miss and the change from one way of

teaching to another made it a little worse than what I had already had." Because of this transfer, he graduated from high school one year later. (App. 125.)

At trial, educational experts and psychologists testified to the emotional harm inflicted by a "suspension"—particularly a "suspension" imposed unilaterally, not giving the student a chance to speak out or understand the basis of his punishment. Being labelled as a "deviant" within the school, they testified, affects the child as a blow to his self-esteem, making him feel "helpless", and often reinforcing or spurring tendencies to misbehave in the future. (App. 155-156, 158-160, 171-176.)

The record also shows a more tangible labelling that resulted from "suspension". The Superintendent of the Columbus Public Schools testified that a child's letter of "suspension" is kept in his permanent file that follows him through the school system. (App. 69.) The file is always open to school personnel. (App. 69.) Thus, as an educational expert testified, "the labelling process . . . does carry over from one teacher to another . . . the teacher expects a certain kind of behavior, namely rebellious behavior or negative behavior, from a youngster and with that kind of expectation as a pre-set the youngster naturally is re-enforced into producing that kind of behavior." (App. 157.)

The child's permanent record, finally, may have other ramifications. It is always available to the police. (App. 79.) And it may be used by teachers writing recommendations to employers or colleges. (App. 69.) Thus the "suspension" label stays with the child in Columbus—well beyond the weeks that he is actually deprived of public schooling.

E.

On the basis of this record, the District Court concluded that the Appellees, and other children "suspended" from the Columbus public schools, from February 1971 to August 1973, were denied Due Process of Law. The Court ordered "that references to the suspensions of plaintiffs or members of their class be removed from all records of the Columbus public schools."[8]

Its holding was limited. It did not declare that every public school must follow one formal procedure in "suspending" children. It recognized room for flexibility in procedure: "The choice of the best procedure for a particular school system should be left to the school officials charged with the administration of that school system." But it denied that procedural discretion is absolute.[9]

Specifically, it held that "suspended" children must be allowed *some* kind of hearing—not a trial-type hearing—"prior to suspension or within a reasonable time thereafter."[10] It noted that immediate removal of a pupil, without a prior hearing, might be essential if the child's conduct is "disrupt[ing] the academic atmosphere of the school, endangers fellow students, teachers or school officials, or damages property."[11] In that case, a later hearing would be appropriate—but "not later than 72 hours after the actual removal of

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[8] *Lopez* v. *Williams*, *supra* note 1, at 1302.

[9] *Id.*

[10] *Id.*

[11] *Id.*

the student from the school."[12] And at the hearing, whether prior or later, the child must, at least, be shown "statements in support of the charges" against him and allowed to offer statements in "defense . . . or in mitigation or explanation of his conduct."[13] The administrator must, then, make a decision based on fair consideration of the opposing statements.

Such a hearing, the District Court said, would simply provide a "minimum" of Due Process. The Columbus public schools did not even provide that.

SUMMARY OF ARGUMENT

This case concerns an administrative process alien to the very concept of Due Process. It is not a summary process. For a hearing is *never* held. Indeed, it is hardly a process at all; it is a system of administrative fiat. It is used to "suspend" children from the public schools.

Once, the operation of the public schools was thought immune from the law and the Constitution. Now, however, the veil has been pierced. It is now known that "suspensions," casual and no doubt arbitrary, are a way of life in the public schools. Over ten years, the lower courts have evolved a body of constitutional law to deal with the problem: they have held that Due Process requires school administrators to allow "suspended" children a hearing. Today, as the issue reaches this Court, the doctrine of procedural due process is sufficiently developed to resolve this case in three clear steps: three steps that inexorably establish

[12] *Id.*

[13] *Id.*

that the school children, here, were denied their right to a fair "suspension" procedure.

First, the Due Process Clause plainly applies to the "suspension" of children from public school. Such action by public school officials is nothing more than ordinary State action; it is directed against "persons" entitled to constitutional protection under the Fourteenth Amendment. It "deprives" them, albeit temporarily, of public schooling, which, in our society, is a basic component of "liberty" and which, in Ohio, is a "property" interest supported by State law and individual school rules.

Second, since the Due Process Clause applies, so does its one most fundamental principle: that no one may be deprived of a protected interest without opportunity for a fair hearing at some time. The public schools of Columbus violated this basic guaranty. This Court has never permitted such a thing. Every procedural due process decision of this Court, therefore, supports a holding that the children of Columbus were denied their right to a fair hearing.

Third, an examination of the realities of school "suspensions"—the risk of arbitrariness, the resulting harm to children, and the interests of school administrators—shows that Due Process is satisfied, in this context, only by opportunity for a fair hearing before "suspension," or, in emergency situations, promptly thereafter.

The holding of the District Court, that the Appellees and their class were "suspended" without Due Process of Law, must be affirmed. Affirmance will not lead this Court down any slippery slope. To the contrary, it will simply establish, once and for all, that school children

may not be *excluded* from public school without at least the minimal fairness that lies at the core of Due Process.

ARGUMENT

I. INTRODUCTION

Some years ago, this lawsuit might never have been filed; if filed, it might have been dismissed out of hand; and, in all likelihood, it would not have any hope to reach the Supreme Court of the United States. Times—and the law—have changed.

Recently, three developments have combined to make the issue raised by this case a pressing one: (1) the problem of school "suspensions" is, at long last, recognized as one of shocking proportions, (2) the lower federal courts have, at last, cut through sterile legalisms surrounding school operations and have evolved a standard for due process in "suspensions", and (3) this Court has sharpened due process doctrine, moving beyond the vague formulae of the past and establishing clearer tests that may now be applied to school "suspensions".

A.

The Problem of School "Suspensions" Is Now Recognized To Be a Problem of Shocking Proportions.

Only a few years ago, school "suspensions" were virtually invisible. The federal government had no idea how many children were "suspended" each year, how they were "suspended", or why. Neither did state governments. Nor local governments. Even school superintendents were often in the dark.[14] For "suspension" was an administrative process so discretion-

[14] The central school authorities of Columbus still are in the dark. *See* page 62 below.

ary and so informal that it was hidden inside the offices of individual principles in indivdual schools throughout America.

An administrative process that operates behind closed doors, beyond the vision of the world, is obviously subject to great abuse.[15] But the abuse remained hidden so long as no one knew how many children it affected. It was assumed, if anyone bothered to think of it, that "suspensions" were confined to a few patently incorrigible troublemakers.

Then, in the fall of 1973, a major effort was undertaken to collect national figures on "suspensions". The Office for Civil Rights of the Department of Health, Education and Welfare (OCR) included questions regarding student "suspensions" in its National School Survey of Public Elementary and Secondary Schools.[16]

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[15] Mr. Justice Frankfurter wrote: "Man being what he is cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights. . . . Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness." *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 171 (1951) (Frankfurter, J., concurring).

[16] The National School Survey of Public Elementary and Secondary Schools is required under Title VI of the Civil Rights Act of 1964 and under Title IX of the Education Amendments of 1972. Two thousand, nine hundred seventeen school districts were surveyed by OCR in the Fall of 1973. These districts account for over 50 percent of the public school enrollment in the country and over 90 percent of the minority enrollment. All school districts eliminating racially or ethnically dual school systems under terms of voluntary plan agreements with OCR or pursuant to Federal court orders were included in the survey, as well as all districts where the enrollments were comprised of ten percent or more minority students and all districts with at least one school where the enrollment was comprised of 50 percent or more minority students.

Local school districts included in the survey were asked to report, by race and by school, the total number of pupils "suspended" at least once during the 1972-1973 school year.[17] Although OCR has not yet completed its final analysis of the data, preliminary analyses show a nationwide pattern of suspensions from school that is truly astounding.

The Director of the O.C.R., appearing before a House of Representatives Subcommittee in May 1974, summarized the findings for "a few of those cities for which the data is most complete." He testified that, during the 1972-1973 school year, the New York City schools "suspended" 19,518 pupils, the Houston schools "suspended" 9,150 pupils, the Miami schools "suspended" 6,812 pupils, the Cleveland schools "suspended" 11,634 pupils, and the Memphis schools "suspended" 9,339 pupils.[18] And these were only pupils "suspended" at least once; many of them were "suspended" more than once during the single school year.

The O.C.R. Director testified, further, that the data suggests a troubling degree of arbitrariness in the "suspension" process. Specifically, the data shows that minority pupils were "suspended" far more often than other pupils. The New York City schools, for example,

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[17] Each district was required to report, by school, on Form OS/CR 102 "the number of pupils suspended at least once from this school campus during the previous school year" and "the total number of suspension days from this school campus during the previous school year."

[18] Statement by Peter E. Holmes, Director, Office for Civil Rights, Department of Health, Education and Welfare, before Subcommittee on Equal Opportunities, Committee on Education and Labor, U.S. House of Representatives, May 21, 1974, at 11-12.

have a 64.4 percent minority enrollment, but 85.9 percent of all pupils "suspended" were from minority groups. This pattern, the O.C.R. Director testified, was in the data for almost all of the major cities analysed.[19]

A review of O.C.R. data from selected states, conducted by the staff of the Children's Defense Fund,[20] shows that the number of children "suspended" from school is surprising not only in absolute terms, but also in proportion to the total number of children in the schools. In each State studied—Arkansas, Maryland, New Jersey, South Carolina and Ohio—tens of thousands of children were "suspended" in the 1972-1973

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[19] *Id.*

[20] The Children's Defense Fund of the Washington Research Project, Inc., reviewed the suspension data in five States in connection with a study it is conducting of children out of school. Staff members of the Children's Defense Fund were interested in determining the extent to which suspensions were being used as a method of discipline, and the extent to which children were being kept out of school because of suspensions. Because OCR had not completed an analysis of the suspension data, the Children's Defense Fund staff, for four of the five States studied, compiled the suspension figures, referred to in the following paragraphs and set forth in Appendix A, from the school-by-school data (Form OS/CR 102) submitted by the districts surveyed by OCR. The suspension data for the South Carolina districts were taken from a chart published by the South Carolina Community Relations Program of the American Friends Service Committee in "Do Unto Others . . . A Report on School Districts' Compliance With South Carolina's 1973 'Student Discipline Law'" *Your Schools*, Special Report, April 1974, pp. 14-16. The figures in that chart were compiled from Form OS/CR 101. The source documents for the suspension data are available at the Office for Civil Rights in the Department of Health, Education and Welfare, 330 Independence Avenue, S.W., Washington, D. C.

school year.[21] Specifically, more than one of every twenty pupils in the schools were "suspended".[22]

But the problem is even more acute. When the focus is turned to junior and senior high schools, the numbers of children "suspended" are amazing. In these schools, "suspensions" were a way of life; about one of every ten secondary school students was "suspended" during the 1972-1973 school year. Minority students, again, were thrown out even more frequently: about one of every seven minority students in secondary school was "suspended".[23]

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[21] The districts in the five States reported "suspending" over 150,000 children in all. The total number "suspended" would far exceed 150,000, if all of the school districts in the five States had been included by OCR in its Fall 1973 Survey. The number of suspensions would also be increased if all of the school districts surveyed had submitted data on suspensions to OCR. Suspension data were available for 397 of the 402 districts surveyed by OCR in the fall of 1973. The largest school district reporting information "not available" on suspensions was Columbus, Ohio.

The 402 districts surveyed by OCR were less that 25 percent of the total number of operating school districts in the five States studied, but they accounted for over 50 percent of the total public school enrollment in these five States. District-by-district breakdowns of the suspension data reported to OCR by each of the districts surveyed are set forth in Tables I-V of Appendix A.

[22] Again, these students were "suspended" *at least* once. In four of the five States studied, students missed over 575,000 school days—the equivalent of 3,200 school years—due to "suspension." (No data on "suspension" days were recorded by the Children's Defense Fund for the school districts in South Carolina.)

[23] Because breakdowns on secondary suspensions were not readily available from OCR, the Children's Defense Fund looked at suspensions from secondary schools in only ten selected districts in the five States studied. However, its review of suspension figures in a number of school districts in other States, which have been examined in connection with its study of children out of school, support these findings.

Indeed, this O.C.R. data actually understates the dimensions of the problem. It identifies children who were "suspended" at least once during the 1972-1973 school year, but gives no indication of the frequency with which individual students were suspended. As part of its nationwide survey of children out of school, the Children's Defense Fund tried to find out more about the "suspended" student. Its staff visited more than 8,000 households in urban census tracts and parts of rural counties.[24] It found that of all the school-age children in these households "suspended" at least once during the 1972-1973 school year, 61% were "suspended" only once. But 39% were "suspended" more than one time during the single year. In fact, 25% were "suspended" three or more times.[25]

Thus, at long last, it is clear that the "suspension" problem really *is* a problem. It is more than that: "Suspension" of children from public school is now a virtual epidemic in America.

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[24] The 8,000 households surveyed were in nine states and the District of Columbia—specifically, parts of Autauga County and Montgomery, Alabama; Denver, Colorado, Hancock County and Macon, Georgia; Davenport, Iowa; Floyd County, Kentucky; Portland, Maine; Cambridge, Holyoke, New Bedford, Somerville and Springfield, Massachusetts; Canton, Mississippi; Columbia and Sumter County, South Carolina; and Washington, D. C. The surveyed areas considered together represent a wide socioeconomic cross-section. Interviewing in these areas took place between July 1973 and March 1974.

[25] A more detailed analysis of the findings of the Children's Defense Fund survey is set forth in Appendix B of this brief.

B.

Dealing With Isolated Cases of "Suspension", the Lower Federal Courts Have Cut Through the Legalisms That Once Shrouded School Operations and Have Developed a Right of Due Process for the "Suspended" Child.

Over the years, "suspensions" have produced many lawsuits in the courts. These lawsuits have revealed what is going on in the public schools: the utter lack of procedural regularity that permits, even encourages, easy and unjustified resort to the sanction of "suspention". But, for years, the courts could not open their eyes to these facts.

Their vision was blocked by a fog of legal doctrine that shrouded the decisions of school administrators to throw out their students. "To support their position, the administrators could draw on a whole grab-bag of conceptualisms: that attendance . . . was a privilege rather than a right; that . . . [the school] stood *in loco parentis* to the student; or that the vague rules . . . that a student could be dismissed whenever the institution thought this advisable, constituted a contract that the student had accepted." Wright, *The Constitution on Campus*, 22 VAND. L. REV. 1027, 1030 (1969). The power of the administrators was absolute, their abuse of it unreviewable. Few questioned this legal orthodoxy.

One who did, Professor Warren Seavey, wrote in 1957: "[O]ur sense of justice should be outraged by denial to students of the normal safeguards. It is shocking that the officials of a state educational institution, which can function properly only if our freedoms are preserved, should not understand the elementary principles of fair play. It is equally shocking to find that a court supports them in denying to a

student the protection given to a pickpocket." Seavey, *Dismissal of Students: "Due Process"*, 70 HARV. L. REV. 1406, 1406-1407 (1957). Yet that is what courts did.

At last, in 1961, a court cut through the legalisms shrouding public school operations for the first time. The case involved the "expulsion" of a student from a state college. The court held that "due process requires notice and some opportunity for hearing before a student . . . is expelled for misconduct." *Dixon* v. *Alabama State Board of Education,* 294 F.2d 150, 158 (5th Cir. 1961), *cert. denied,* 368 U.S. 930. The court reasoned that a hearing was required because "a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witnesses." *Id.* at 158-159. It held that the hearing (a) must be before the dismissal, and (b) must involve "the rudiments of an adversary proceeding." *Id.*

At first, other courts were slow to generalize the *Dixon* holding, as they clung to the idea that they "should not usurp" the role of school administrators. *E.g., Madera* v. *Board of Education,* 386 F.2d 778, 784 (2nd Cir. 1967). But, haltingly, *Dixon* was applied to "expulsion" from a public high school, *e.g., Wasson* v. *Trowbridge,* 382 F.2d 807 (2nd Cir. 1967), and then to "suspension" from a state college, *e.g., Esteban* v. *Central Missouri State College,* 277 F.Supp. 649 (W.D. Mo. 1967), and then to "suspension" from a public high school, *e.g., Williams* v. *Dade County School Board,* 441 F.2d 299 (5th Cir. 1971). Ten years after the *Dixon* decision, it was being applied regularly to "suspensions" from public schools.

In the early 1970's, the courts began to apply *Dixon* to "suspensions" of varying severity. Once again, they felt their way slowly, carefully. At first, they required a *prior* hearing for a "suspension" of 40 days, *Williams* v. *Dade County School Board, supra,* and then for a "suspension" of 10 days, *Black Students of North Fort Myers Jr.-Sr. High School* v. *Williams,* 470 F.2d 957 (5th Cir. 1972), but not for a "suspension" of 5 days, *Jackson* v. *Hepinstall,* 328 F.Supp. 1104, 1106 (N.D.N.Y. 1971), or of 3 days, *Tate* v. *Board of Education,* 453 F.2d 975 (8th Cir. 1972). And yet they seemed to assume that *some* kind of hearing should be held even in cases of shorter "suspensions". *E.g., Banks* v. *Board of Public Instruction,* 314 F.Supp. 285, 292 (S.D.Fla. 1970).

Next, the courts recognized that even a "suspension" of a few days could work substantial harm to a child. *E.g., Shanley* v. *Northeast Ind. School District,* 462 F.2d 960 (5th Cir. 1972). One court required a formal, prior hearing for a "suspension" of two days. *Mills* v. *Board of Education,* 384 F.Supp. 866, 878 (D.D.C. 1972). And another observed that "a suspension of even one hour could be quite critical to an individual student if that hour encompassed a final examination that provided for no 'make-up'." *Shanley* v. *Northeast Ind. School District, supra,* at 967 n.4.

Finally, in the last two years, the courts have reached the middle-ground solution that they appeared to have been searching for. They have concluded that a "suspension" of 5 days, *Vail* v. *Board of Education,* 354 F.Supp. 592, 603-604 (D.N.H. 1973), or 10 days, *Black Students of North Fort Myers Jr.-Sr. High School* v. *Williams, supra,* must be preceded by an adversary hearing of the kind contemplated in *Dixon.* For

shorter "suspensions" "full compliance with the requisites outlined in *Dixon* is not required." *Pervis* v. *LaMarque Ind. School District,* 466 F.2d 1054, 1058 (5th Cir. 1972). But "due process requires at least an *informal* administrative consultation with a student before *any* suspension is imposed so that the student can know why he is being disciplined and so that the student can have the opportunity to persuade the school official that the suspension is not justified." *Vail* v. *Board of Education, supra,* at 603.

Thus the law of "suspension" from public school has developed dramatically—although gradually—in the past years. The legal spade work has been done; a vast variety of cases have yielded a coherent doctrine. The time is ripe for decision by this Court.

C.

The Principles of Procedural Due Process Have Now Been Sharply Defined by This Court and May Now Be Applied to the Problem of School "Suspensions".

For years, the law of procedural due process was vague and opaque. "Many controversies," Mr. Justice Jackson said, "have raged about the cryptic and abstract words of the Due Process Clause." *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, 313 (1950). The controversies were due, largely, to the very fact that the Clause was interpreted to be "cryptic and abstract".

So long as due process called only for a vague, unsystematic "weighing" of a shifting multitude of factors, it could be made to allow whatever a judge wanted it to allow. *See Goldberg* v. *Kelly,* 397 U.S. 254, 255-257 (1970) (Black, J., dissenting); *In re Winship,* 397 U.S. 358, 377 (1970) (Black, J., dissenting). Any one fac-

tor could be picked out, emphasized, and given the weight that the desired result required. A relatively novel issue—like school "suspensions"—would be resolved *ad hoc*. Because it would *seem* novel, a judge might start with an intuitive "feeling" that he should not intervene *via* the Due Process Clause. That might have ended the case. For the Clause required no standard any more precise than that very "feeling" of the judge.

Now, that has changed. The Supreme Court in the last twenty years has built "law" into the Due Process of Law. Most notable, of course, was the "incorporation" of Bill of Rights provisions into the Fourteenth Amendment Due Process Clause. *E.g., Gideon* v. *Wainwright,* 372 U.S. 335 (1963). But just as important, if somewhat slower in coming, was the successful effort led initially by Mr. Justice Harlan to construct a stable, independent doctrine of procedural due process. *E.g., Boddie* v. *Connecticut,* 401 U.S. 371 (1971); *Sniadach* v. *Family Finance Corporation,* 395 U.S. 337, 342 (1969) (Harlan, J., concurring); *Fuentes* v. *Shevin,* 407 U.S. 67 (1972); *Board of Regents* v. *Roth,* 408 U.S. 564 (1972); *Arnett* v. *Kennedy,* 42 U.S.L.W. 4513, 4532 (1974) (White, J., concurring and dissenting); *Mitchell* v. *W. T. Grant Co.,* 42 U.S.L.W. 4671 (1974); *Astol Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 42 U.S.L.W. 4693 (1974).

Now, an intuitive "feeling" is only the beginning, not the end, of a case. Application of the Due Process Clause still depends on a variety of factors. But those factors are ordered systematically; and they are limited systematically. In some cases, the factors must still be weighed. But they must be weighed system-

atically. A novel issue, such as school "suspensions", is no longer presented in a doctrinal vacuum. There is stable doctrine that must be applied to the issue.

Analysis of a procedural due process issue now requires three distinct steps. (1) It no longer begins with a proclamation that the Due Process Clause is "cryptic and abstract". Instead, the analysis now begins by considering whether a "person" has been "deprived" of an interest in "life, liberty or property". *E.g., Fuentes* v. *Shevin, supra,* at 84-90; *Morrissey* v. *Brewer,* 408 U.S. 471, 481 (1972); *Board of Regents* v. *Roth, supra,* at 569-578; *Perry* v. *Sindermann,* 408 U.S. 597, 599-604 (1972); *Arnett* v. *Kennedy, supra,* at 4530-4531 (Powell, J., concurring), 4534-4536 (White, J., concurring and dissenting), 4522-4524 (Marshall, J., dissenting). If a case falls within these terms of the Due Process Clause, then the right to procedural due process must be granted.

To determine what that right is, the analysis takes two more steps. (2) Initially, one basic principle must be applied: A person deprived of "life, liberty or property" must be allowed *some* opportunity at *some* time to challenge the basis of the deprivation. *E.g., Boddie* v. *Connecticut, supra,* at 377-378; *Fuentes* v. *Shevin, supra,* at 80-81; *Board of Regents* v. *Roth, supra,* at 569-571; *Arnett* v. *Kennedy, supra,* at 4530 (Powell, J., concurring), 4534 (White, J., concurring and dissenting), 4523 (Marshall, J., dissenting). This opportunity to be heard must be "meaningful", both fair and adequate to bring out the facts that might persuade those in authority to countermand the deprivation. *E.g., Armstrong* v. *Manzo,* 380 U.S. 545, 552 (1965); *Goldberg* v. *Kelly, supra,* at 266-271; *Morrissey*

v. *Brewer, supra,* at 484-489; *Arnett* v. *Kennedy, supra,* at 4539-4541 (White, J., concurring and dissenting).

(3) Finally, to determine the timing and form of the hearing required by Due Process, a court must canvass three factors: (a) What is the risk of a mistaken deprivation of "life, liberty or property" under present circumstances? (b) What harm is done to a person by a mistaken deprivation? (c) What effect would requirement of a fair hearing, before the deprivation, have on the governmental program at issue. To what extent would it frustrate the program? To what extent would it promote the goals of the program? Based on this survey, a court can decide what kind of hearing opportunity is required and whether it must be before or after the initial deprivation. *See e.g., Goldberg* v. *Kelly, supra,* at 263-271; *Boddie* v. *Connecticut, supra,* at 378; *Fuentes* v. *Shevin, supra,* at 80-82; *Morrissey* v. *Brewer, supra,* at 477-490; *Board of Regents* v. *Roth, supra,* at 569-570; *Arnett* v. *Kennedy, supra,* at 4531-4532 (Powell, J., concurring), 4536-4541 (White, J., concurring and dissenting), 4524-4528 (Marshall, J., dissenting); *Mitchell* v. *W. T. Grant Co., supra; Astol Calero-Toledo* v. *Pearson Yacht Leasing Co., supra.*

There *is* a doctrine of procedural due process. This case, then, is not a "school case". Rather, it is a procedural due process case. And, when the law of procedural due process is applied, this becomes not a hard case, but an easy one.

II. THE DUE PROCESS CLAUSE APPLIES

The elementary issue is whether the "suspension" of children from public school falls within the terms of the Due Process Clause: whether the children are entitled to any due process protection at all. It is the

most hotly contested issue in the case. It cuts to the heart of the court decisions, since 1961, that have protected a child's interest in schooling with the due process guaranty. The question is whether the fog of conceptualisms that once shrouded the public schools should be permitted to descend once again.

A.

Public School Action Is Ordinary "State Action".

The Fourteenth Amendment applies to State action. The public schools are run by the State. But, at one time, it was thought that school administrators were somewhat special, not just State agents, but quasi-parents. If they were subject to the Constitution at all in dealing with pupils, it was thought to be a wholly permissive Constitution. See Wright, *The Constitution on Campus,* 22 VAND. L. REV. 1027, 1030 (1969); Buss, *Procedural Due Process for School Discipline,* 119 U. PA. L. REV. 547, 559-562 (1971). This old doctrine, however, is now too transparent to mask the obvious reality, too feeble to bar the Due Process Clause, with its full force, from the public schools.

Clearly, public school administrators *are* State Agents. They act for the government, they are employed by the government, and they are subject to government control. They are *not* parents. With the enactment of compulsory education laws, "to suggest that the parent delegates unrestricted power [to school administrators] especially when he objects to the discipline imposed, is patently absurd." Buss, *Procedural Due Process for School Discipline, supra,* at 560. *See* pages 78-79 below.

Time and again, the Court has recognized that public school officials are not parents for the purposes of the

Constitution. It has recognized that the interests of the public schools and of parents may conflict fundamentally. *E.g., Meyer* v. *Nebraska,* 262 U.S. 390 (1923); *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925). And it has applied the Constitution to limit the actions of public school administrators. *E.g., West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624 (1943); *Engel* v. *Vitale,* 370 U.S. 421 (1962).

The Court has not stopped at applying the Constitution to formal regulations of School Boards, but has also applied it, with full force, to discretionary actions of public school principals. Indeed, it has applied the Fourteenth Amendment to disciplinary action by principals—specifically to "suspension" of students. *Tinker* v. *Des Moines Indep. Community School District,* 393 U.S. 503 (1969).

Thus, if anything is sure, it is sure that public school action is ordinary "State action". No fiction alone can keep the Fourteenth Amendment out of the public schools of Columbus.

B.

Children Are Full-Fledged "Persons".

The Fourteenth Amendment protects "persons". It seems obvious that children are "persons". But an age-old tradition was to the contrary. It was long believed that, "like the imbecile, the crazed and the beasts, over . . . children . . . there is no law." [26] This antique philosophy may animate the actions of many public schools. It is however, obnoxious to the Constitution.

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[26] T. Hobbes, LEVIATHAN 257 (Molesworth ed., Vol. 3, 1839-1845).

This Court has spoken in no uncertain terms: "[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone." *In re Gault*, 387 U.S. 1, 13 (1967). The Court has specifically affirmed the right of children to Due Process of Law under the Fourteenth Amendment. *E.g., Haley* v. *Ohio*, 332 U.S. 596 (1948); *Gallegos* v. *Colorado*, 370 U.S. 49 (1962); *In re Gault, supra; In re Winship*, 397 U.S. 358 (1970); *McKeiver* v. *Pennsylvania*, 403 U.S. 528 (1971). Thus it is too late in the day to read children out of the Due Process Clause.

To be sure, the past decisions recognizing the due process rights of children have arisen in a criminal context, *Haley* v. *Ohio, supra; Gallegos* v. *Colorado, supra*, or a quasi-criminal context, *In re Gault, supra; In re Winship, supra; McKeiver* v. *Pennsylvania, supra*. The present case arises in the context of the public schools. But that makes no initial difference.

The context in which a child asserts due process rights may affect the *nature* of the due process he deserves. *McKeiver* v. *Pennsylvania, supra*. But it cannot affect his right to invoke the Due Process Clause at all. It cannot affect his constitutional status as a "person".

The Court has held that a child's right to free expression, under the First and Fourteenth Amendments, does not disappear in the context of the public schools. *Tinker* v. *Des Moines Indep. Community School District*, 393 U.S. 503 (1969). How, then, could his right to due process disappear? If a child in school is a "person" for purposes of the First and Fourteenth

Amendments,[27] then he is a "person" for purposes of the Fourteenth Amendment alone.

The sole fact that he is a child, moreover, cannot water down the due process to which he is entitled. For the evil addressed by the Due Process Clause threatens him as much as an adult. A child is no more immune to deprivation of liberty or property than an adult. Indeed, he is more vulnerable to such deprivation. He may, in fact, have less liberty. He may have less property. But what he has can be taken away. And it often is. *See Tinker* v. *Des Moines Indep. Community School District, supra.* To protect what he has, he asks to be heard.

The right to be heard is just as important to a child as to an adult. Sometimes, it is suggested that a child's First Amendment rights may be more limited than those of an adult, simply on grounds of age and maturity. *See Ginsberg* v. *New York*, 390 U.S. 629, 639 (1968). Some may think that a child lacks experience needed to participate in the general marketplace of ideas. The Court in *Tinker* rejected this notion. 393 U.S. at 505-507. But, whatever a child's competence to participate in this general marketplace, he surely is competent to speak and be heard in regard to facts about his own conduct, facts which will determine whether he is deprived of liberty or property. He may not know much about the war in Vietnam. But he knows what he did

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[27] "Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State." *Tinker* v. *Des Moines Indep. Community School District, supra*, at 511.

a few hours ago. His interest in the war may be less than that of an adult. But his interest in protecting what is his is the same as that of any other "person".

C.

The Children in Columbus Were "Deprived" of Schooling.

The Due Process Clause applies to "deprivations". The Columbus school children surely were "deprived" of schooling. They were thrown out of school. They were not allowed to attend their classes. They were not allowed to enter their school building. They were not allowed even to get their books. What they had—the opportunity to go to school—was taken away.

To be sure, it was not taken away totally, forever. Some were thrown out of all Columbus day schools forever, but were permitted to go to night school after their "suspension". Some were thrown out of their former school forever, but were permitted to go to another school afterwards. Some were even permitted to return to their former school after the "suspension". *See* pages 13-14 above. They all, however, had a period of up to two weeks of "suspension" in which their opportunity to attend *any* school was taken away completely.

The temporary nature of the "suspension" does not make it any the less a "deprivation" for the purposes of the Due Process Clause. The Court has held that temporary garnishment of wages and temporary replevin of possessions are "deprivations" subject to procedural due process. *Sniadach* v. *Family Finance Corp.*, 395 U.S. 377 (1969); *Fuentes* v. *Shevin*, 407 U.S. 83 (1972). Similarly, it has held that temporary "suspension" of a driver's license is, constitutionally,

a "deprivation". *Bell* v. *Burson*, 402 U.S. 535 (1971). Last Term, the Court simply took it for granted that temporary "sequestration" of possessions is a "deprivation" requiring due process protection. *Mitchell* v. *W. T. Grant Co.*, 42 U.S.L.W. 4671 (1974). "[I]t is now well settled that a temporary, nonfinal deprivation . . . is nonetheless a 'deprivation' in terms of the Fourteenth Amendment." *Fuentes* v. *Shevin*, *supra*, at 85.

The "deprivation" in the present case is even clearer than in the Court's past decisions. First, the time period of the "deprivation" was longer. The Appellees, with one exception, were thrown out of school for at least a full two weeks. But, in the past decisions, the deprivations could last as little as a few days. *Sniadach* v. *Family Finance Corp.*, *supra*, at 343 (Harlan, J., concurring); *Bell* v. *Burson*, *supra*, at 536; *Fuentes* v. *Shevin*, *supra*, at 85; *Mitchell* v. *W. T. Grant Co.*, *supra*, at 4673. The Court had no trouble with this fact. "The Fourteenth Amendment", it said, "draws no bright lines around three-day, or 10-day or 50-day deprivations . . . ." *Fuentes* v. *Shevin*, *supra*, at 85.

Second, the temporary "deprivation" here was more permanent and more total, within its time bounds, than those in past decisions. In the past cases, a person had the opportunity at any time to regain what had been taken from him by posting a bond. *Sniadach* v. *Family Finance Corp.*, *supra*, at 343 (Harlan, J., concurring); *Bell* v. *Burson*, *supra*, at 536; *Fuentes* v. *Shevin*, *supra*, at 85; *Mitchell* v. *W. T. Grant Co.*, *supra*, at 4673. The children in Columbus had no such option to undo a "suspension". Moreover, in the past cases, a person

was compensated later for his temporary loss if it turned out to have been mistaken. *Fuentes* v. *Shevin, supra,* at 73 n.6; *Mitchell* v. *W. T. Grant Co., supra,* at 4676. The children in Columbus could look forward to no such compensation. Whether or not their "suspension" was mistaken, they were not allowed to make up the work they missed and were inevitably given "zeros" for their days out of school.

Third, the temporary "deprivation" here worked other potential "deprivations" beyond the actual period out of school. *See* pages 14-15 above. In the past cases, there was no suggestion that the loss of possessions for a few days would, in itself, do any harm in the future. *Fuentes* v. *Shevin, supra; Mitchell* v. *W. T. Grant Co., supra.* But, here, the record shows that denial of schooling for two weeks may deny a child educational advancement or job opportunities later on.

Thus, if it were not already obvious that the Columbus school children suffered a "deprivation" for purposes of the Due Process Clause, this Court's past decisions make it a foregone conclusion.

D.

The Children in Columbus Were Deprived of an Interest in "Liberty" and "Property".

The Due Process Clause applies only to certain deprivations: deprivations of "life, liberty or property". The school children obviously were not deprived of their lives. But they were deprived of the opportunity to go to public school. This basic opportunity, quite clearly, is an aspect of the "liberty" and "property" protected by the Fourteenth Amendment.

Years ago, in 1961, when the courts first held that deprivation of public education was subject to due process safeguards, the distinction between "rights" and "privileges" was still thought to limit application of the Fourteenth Amendment. The *Dixon* court rejected this distinction, holding that lack of a constitutional "right" to public education was irrelevant to a student's right to due process. *Dixon* v. *Alabama State Board of Education,* 294 F.2d 150, 156 (5th Cir. 1961). This was a great breakthrough at the time. Since then, however, "the Court has fully and finally rejected the wooden distinction between 'rights' and 'privileges' that once seemed to govern the applicability of procedural due process rights." *Board of Regents* v. *Roth,* 408 U.S. 564, 571 (1972). That conceptualistic baffle to due process rights for students is now buried. Strangely, the Appellants in this case seek to resurrect it, with their insistence that public education is not a "fundamental" constitutional right. Brief of Appellants, at 8-16. They seek to apply the law of twenty years ago. One need only say: They are too late.

In place of "right"-"privilege" analysis, the *Dixon* court, thirteen years ago, held that public education is protected by the Due Process Clause because it is "vital and, indeed, basic to civilized society." 294 F.2d at 157. Until recently, other courts followed *Dixon* in this emphasis on the *importance* of a deprivation as the index of its constitutional protection. *See* cases cited on pages 26-28 above. This analysis has led them to worry interminably about distinguishing "important" or "substantial" school "suspensions" from "unimportant" or "insubstantial" ones. But, now, this approach—like that of "right" and "privilege"—has become obsolete.

Weighing the "importance" of an interest "has long been a part of any determination of the *form* of hearing required in particular situations by procedural due process. But, to determine whether due process requirements apply in the first place, we must look not to the 'weight' but to the *nature* of the interest at stake." *Board of Regents* v. *Roth, supra,* at 570-571. *See Fuentes* v. *Shevin,* 407 U.S. 67, 88-90 (1972); *Morrissey* v. *Brewer,* 408 U.S. 471, 481 (1972); *Arnett* v. *Kennedy,* 42 U.S.L.W. 4513, 4530-4531 (Powell, J., concurring), 4534-4536 (White, J., concurring and dissenting), 4522-4524 (Marshall, J., dissenting). Thus, to determine whether the deprivaton of public schooling is subject to procedural due process, the test is "whether the nature of the interest is one within the contemplation of the 'liberty or property' language of the Fourteenth Amendment." *Morrissey* v. *Brewer, supra,* at 481.

(1) *"Liberty"*. The interests in "liberty" protected by the Due Process Clause are inherently vaguer, more difficult of description, than the "property" interests. This is inevitable. "In a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed." *Board of Regents* v. *Roth, supra,* at 572. When the Court has sought to give examples of protected "liberty" interests, it made clear that more than "freedom from bodily restraint" is involved and it has mentioned, *inter alia,* the opportunity of an individual "to acquire useful knowledge, to marry, establish a home and bring up children." *Meyer* v. *Nebraska,* 262 U.S. 390, 399 (1923); *Board of Regents* v. *Roth, supra,* at 572. The opportunity to attend public school must be near the center of this circle of this circle of protected "liberty" interests.

Indeed, that opportunity corresponds to two of the examples of "liberty" interests the Court has already mentioned. For children, public schooling is *the* way "to acquire useful knowledge." For parents, public schooling is essential to "bring up [their] children." One needs little imagination to show that public education—the opportunity that determines all later opportunities—must be one "liberty" protected from arbitrary encroachment by a "Constitution for a free people." A people deprived of education might not long be a free people.

Imagination, however, is not required to reach this conclusion. One can rely on the prior *holdings* of the Court. For the Court has held that the opportunity to learn foreign languages in public school is a protected "liberty" under the Fourteenth Amendment. *Meyer* v. *Nebraska, supra.* If the interest in learning one subject in public school is protected, then so must be the interest in learning *all* subjects. The Court has also held that the opportunity to attend private school is a protected "liberty". *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925). Why not, then, the opportunity to attend public school?

To be sure, the two past decisions involved total deprivation of the "liberties" at stake. The deprivation here is temporary. But, since it is the *nature* of the interest rather than its weight that determines whether the Due Process Clause applies, this distinction makes no difference.

Due Process, no doubt, would require more formal protection against a total deprivation of the "liberty" of public schooling. But it requires *some* protection against temporary deprivations. Liberty would be frail

indeed if it were secure against destruction *in toto*, but could be taken away arbitrarily, piece by piece.

Naturally, the "liberty" covered by the Due Process Clause has limits. It does not include the interest in holding a particular job with a particular employer. *Board of Regents* v. *Roth, supra; Perry* v. *Sindermann*, 408 U.S. 593 (1972); *See Cafeteria & Restaurant Workers* v. *McElroy*, 367 U.S. 886 (1961). On the other hand, it does include the interests in finding some job. *Board of Regents* v. *Roth, supra*, at 573-574; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 185 (1951) (Jackson, J., concurring). And "liberty" would be infringed if a person were dismissed from a particular job on the basis of a "charge against him that might seriously damage his standing and associations in the community." *Board of Regents* v. *Roth, supra*, at 573; *see Wieman* v. *Updegraff*, 344 U.S. 183, 191 (1952).

Similarly, in this case, the children's "liberty" might not have been infringed if they had been temporarily moved out of one particular school into another equivalent one. But that is not what happened. They were excluded from *all* schools. And they were excluded on the basis of a charge of misconduct that, the record shows, might well seriously damage their standing and associations with future teachers and fellow pupils. *See* page 15 above. Thus it is clear: the children were deprived of an interest in "liberty" protected by the Due Process Clause.

(2) *"Property"*. "To have a property interest in a benefit, a person . . . must . . . have a legitimate claim of entitlement to it." *Board of Regents* v. *Roth, supra*, at 577. This claim is not created by the Constitution.

Rather, it must arise under "existing rules or understandings that stem from an independent source." *Id.* The source may be a statute setting conditions for entitlement to a benefit, *e.g., Goldberg* v. *Kelly,* 397 U.S. 254 (1970), or conditions for continued entitlement to a job, *Arnett* v. *Kennedy,* 42 U.S.L.W. 4513, 4530 (Powell, J., concurring), 4534-4536 (White, J., concurring and dissenting), 4522-4524 (Marshall, J., dissenting). The source of the 'property" interest may also be a written contract, *Wieman* v. *Updegraff, supra,* or an institutional "guideline", *Perry* v. *Sindermann, supra,* at 599-600, or an unwritten but "mutually explicit" and binding "understanding", *id.* at 600-601. The test is whether there is *some* independent source on which a person may legitimately rely to show that he is *entitled* to a benefit. In this case, the school children could legitimately rely on two such sources to show their entitlement to continued public schooling.

First, they could rely on State statutory law. The Ohio Revised Code obliges local governments to provide a "free education" to all "residents between six and twenty-one years of age." Ohio Rev. Code §§ 3313.48, 3313.64. A duty creates a correlative right. Ohio localities have a duty to provide schooling to children between six and twenty-one years old. Therefore, such children have a right to public schooling. They need make two showings—that they are "residents" of a locality and that they are of the specified age—and they can then establish their statutory entitlement to go to school.

The statutory entitlement to a public education is reinforced by a Code provision that obliges parents to "cause" their children of school age "to attend a

school." Ohio Rev. Code § 3321.03. The only exception is for a child who has "been determined to be incapable of profiting substantially by further instruction." *Id.* The Ohio courts have made clear that "the purpose of . . . this statute regarding compulsory school attendance" is to benefit the child. *State* v. *Gans,* 151 N.E.2d 709, 714 (1958). The goal is to enable the child to realize "his own potential", for without education he "can hardly be expected to realize his potential either to himself or to his community, regardless of his basic natural intelligence." *Id.* at 713-714. Once again, therefore, the statutory duty supports a correlative claim of entitlement to schooling.

Significantly, the Ohio compulsory attendance law seeks to guarantee the child's education "for the full time the school attended is in session, which shall not be for less than thirty-two weeks per school year." Ohio Rev. Code § 3321.04. Thus the child's entitlement is not just to *some* public schooling. It is to public schooling for thirty-two weeks a year. The children in this case were deprived of that schooling for two weeks of the year.

Of course, it is true that Ohio law permits school principals to "suspend" pupils for up to two weeks and does not limit the permissible grounds for "suspension". Ohio Rev. Code § 3313.66. This statutory provision, however, does not dissolve the child's entitlement to schooling. The entitlement is not so easily overcome. And, in any event, the statutory law is only the first source of the entitlement.

Second, in the context of "suspension", a child may also base his claim on the rules of his particular school. The record shows that each public school in Columbus

did adopt rules that stated the types of misconduct for which a pupil might be thrown out of school. *See* page 9 above. These rules limited the discretion of principals. They provided a basis for a legitimate claim that a child had been wrongfully "suspended"—if he violated no rule—and, therefore, that he was entitled to remain in school.

The school rules, at the very least, have the force of the "guidelines" on which a teacher based his claim of job entitlement in *Perry* v. *Sindermann, supra,* at 600. The Court in *Perry* noted that:

> "the respondent claimed legitimate reliance upon guidelines promulgated by the Coordinating Board of the Texas College and University System that provided that a person, like himself, who had been employed as a teacher in the state college and university system for seven years or more has some form of job tenure. Thus, the respondent offered to prove that a teacher with his long period of service at this particular State College had no less a 'property' interest in continued employment than a formally tenured teacher at other colleges, and had no less a procedural due process right to a statement of reasons and a hearing before college officials upon their decision not to retain him."

408 U.S. at 600-601. The Court made clear that " 'property' interests subject to procedural due process protection are not limited by a few rigid, technical forms." *Id.* at 601. Earlier, the Court had noted that "property" interests are created by sources "*such as* State law." *Board of Regents* v. *Roth, supra,* at 577 (emphasis added). Explicit State law, therefore, is one, but only one, possible source of protected "property" interests. If the "guidelines" in *Perry* were

another possible source, then so were the school rules in this case.

The rules may have been vague. But they could not have been more vague than the "sufficient cause" standard held by a majority of the Court, last Term, to create a "property" interest in federal employment. *Arnett* v. *Kennedy, supra,* at 4530 (Powell, J., concurring), 4534-4536 (White, J., concurring and dissenting), 4522-4524 (Marshall, J., dissenting). If a statute "guaranteeing . . . continued employment absent 'cause' for discharge conferred . . . a legitimate claim of entitlement which constituted a 'property' interest," *id.* at 4530 (Powell, J., concurring), then so did the Ohio statutes guaranteeing a child thirty-two weeks of public schooling and the school rules specifying the misconduct that could lead to "suspension".

* * * * * * * * *

Exclusion from public school, therefore, constitutes a "deprivation" of both "liberty" and "property". The lower courts, since 1961, have assumed as much. The law they have evolved—for both "expulsions" and "suspensions"—rests on this assumption. It is now time to make it official, so that the Due Process Clause will not again be totally barred from the public schools.

III. THE BASIC PRINCIPLE OF DUE PROCESS ESTABLISHES THAT THE COLUMBUS "SUSPENSION" PROCEDURE WAS UNCONSTITUTIONAL: THE CHILDREN WERE DENIED THE RIGHT TO BE HEARD

It being settled that the Due Process Clause applies in this case, the remaining question is: Were the "suspended" children in Columbus given the due process the Constitution demands?

To be sure, the answer to this question may require a "weighing" of particular factors involved in school "suspension". *See* pages 54-81 below. But, first, it requires application of the most basic principle of Due Process, a principle that applies in any case and defines the nature of the constitutional guaranty: A person deprived of life, liberty or property must, sometime, have an opportunity to be heard.

"The principles of due process 'come to us from the law of England . . . and their requirement was there designed to secure the subject against the arbitrary action of the crown and place him under the protection of the law.' *Dent* v. *West Virginia*, 129 U.S. 114, 123 (1889)." *Arnett* v. *Kennedy*, 42 U.S.L.W. 4513, 4534 (1974) (White, J., concurring and dissenting). Thus the purpose of Due Process is to secure life, liberty and property against arbitrary deprivation. It is "not only to ensure abstract fair play to the individual. Its purpose, more particularly, is . . . to minimize substantively unfair or mistaken deprivations . . . ." *Fuentes* v. *Shevin*, 407 U.S. 67, 80-81 (1972).

To serve that purpose, Due Process imposes a simple, but absolutely essential, requirement: "The past cases of this Court *uniformly* indicate that *some* kind of hearing is required at *some* time . . . ." *Arnett* v. *Kennedy*, *supra*, at 4534 (White, J., concurring and dissenting) (emphasis added). The "opportunity to be heard" has been at the core of procedural due process from the beginning. *See Baldwin* v. *Hale*, 1 Wall. 223, 233 (1863); *Windsor* v. *McVeigh*, 93 U.S. 274 (1876); *Grannis* v. *Ordean*, 234 U.S. 385 (1914). It has always been held crucial to preventing arbitrary or mistaken deprivations. There is no substitute, because "no better instru-

ment has been devised for arriving at truth than to give a person . . . notice of the case against him and opportunity to meet it." *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring).

The Columbus "suspension" process collided even with this most basic requirement. The Appellees, the record shows, were not allowed *any* opportunity at *any* time "to be heard." The word of teachers and administrators was the last word. The child had no chance to show that they were mistaken about his conduct or that there were mitigating circumstances. Even after the suspension was over, there was no opportunity to contest its validity.

It was a process that rested on one-sided determination of facts. One view of the facts went unchallenged and untested; the other went unheard. The risk of unfair or mistaken "suspensions", therefore, could not help but be great. "[F]airness [and truth] can rarely be obtained by . . . one-sided determination of facts decisive of rights." *Joint Anti-Fascist Refugee Committee* v. *McGrath, supra,* at 170 (Frankfurter, J., concurring). Consequently, the child's entitlement to schooling was insecure. It was subject, always, to arbitrary deprivation: the very evil that Due Process is meant to combat.

Of course, some children in the class represented by the Appellees were allowed to attend a "conference" after their "suspension" and a "discussion" beforehand. But, the record shows, the facts of the "suspension" were not to be contested at the "conference". And, at the "discussion", although the child might be allowed to speak, there was a flat policy that his version

of the facts was to be disregarded if in conflict with the version presented by a teacher or administrator. *See* page 10 above.

This did not even approach an opportunity "to be heard". It collided with the second essential requirement of Due Process. That requirement is that the hearing mandated by procedural due process must be a fair hearing. It must be conducted "in a meaningful manner." *Armstrong* v. *Manzo,* 380 U.S. 545, 552 (1965). It is hardly "meaningful" unless the individual not only has the right to speak, but also the right to have what he says *considered.*

The Court has said that "substantively unfair and simply mistaken deprivations . . . can be prevented" when "a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say." *Fuentes* v. *Shevin, supra,* at 81. Obviously, however, mere speaking and listening are not enough. If the State does not fairly consider what it hears, no purpose is served: Words not considered can hardly serve to prevent unfair or mistaken deprivations.

The "discussion" that Columbus principals sometimes held with pupils, then, was not a "hearing" at all. "Suspensions" remained wholly one-sided: Facts were still determined solely on the basis of one version of events. A pupil might present his side; but, if it was in conflict with the charges against him, it would be ignored. He might as well remain silent. If the core requirement of a "meaningful" opportunity to be heard has any meaning, it condemns this hollow form.

The Columbus "suspension" process, therefore, flouted the most basic principle of procedural due pro-

cess. It struck at the very heart of the Due Process guaranty. The Court has *never* permitted such a thing.

The only cases in which the Court has held that there need be *no* meaningful hearing at any time have been cases where *no* "liberty" or "property" interest had been taken away. *E.g., Board of Regents* v. *Roth*, 408 U.S. 564 (1972); *Cafeteria & Restaurant Workers* v. *McElroy*, 367 U.S. 886 (1961); *United States ex rel. Knauff* v. *Shaughnessy*, 338 U.S. 537 (1951); *Ex parte Duncan N. Hennen*, 13 Pet. 225 (1839). *See Arnett* v. *Kennedy, supra*, at 4535 (White, J., concurring and dissenting). In other words, they have been cases in which the Due Process Clause did not apply at all. When—as in this case—it does apply, the requirement of some meaningful hearing at some time has always been enforced.

The law of the Constitution suggests no way in which this requirement may be avoided. (1) In dicta, the Court has indicated that the requirement of a hearing *before* the initial deprivation of a protected interest may extend only to "significant" interests. *Boddie* v. *Connecticut*, 401 U.S. 371, 378-379 (1971); *Fuentes* v. *Shevin, supra*, at 82, 86, or to interests that are not "de minimus", *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 342 (Harlan, J., concurring); *Fuentes* v. *Shevin, supra*, at 90 n.21. But it has never suggested that a vague standard of "significance" or "de minimus" limits the more basic right to a fair hearing at *some* time.

In any event, in the very opinion that included reference to both the "significance" and "de minimus" ideas, the Court held that the interest in possession of an ordinary stereo, for a few days, was neither "insig-

nificant" nor "de minimus". *Fuentes* v. *Shevin, supra,* at 88-90. How, then, could the interest in two weeks of public schooling be "insignificant" or "de minimus"? Indeed, in *Fuentes,* Due Process required a hearing *before* the initial deprivation of the stereo. In a later case, it required a hearing *after* the initial deprivation of a refrigerator and a washing machine. *Mitchell* v. *W. T. Grant Co.,* 42 U.S.L.W. 4671 (1974). In this case, it must require a hearing at some time, before or after the deprivation of public schooling. It would be absurd to suggest that two weeks of public schooling is not at least as worthy of protection as a few days' possession of a stereo or a refrigerator or a washing machine.

(2) It may be that special exigencies of school administration will affect the *form* of hearing to which pupils are entitled. It may be that those exigencies will determine that the hearing, in some situations, be held *after* the initial "suspension". *See* pages 73-75 below. But they cannot obviate the requirement of a hearing at *some* time.

Many times, the Court has faced exigent circumstances that required very prompt action to serve a special governmental need. *E.g., Stochr* v. *Wallace,* 255 U.S. 239 (1921); *Phillips* v. *Commissioner of Internal Revenue,* 283 U.S. 589 (1931); *Fahey* v. *Mallonee,* 332 U.S. 245 (1947); *Ewing* v. *Mytinger & Casselberry, Inc.,* 339 U.S. 594 (1950); *Axtol Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 42 U.S.L.W. 4693 (1974). In these situations, it has allowed the opportunity for a hearing to be postponed. But, in every case, it was held that Due Process required that there be "at *some* stage an opportunity for a hearing."

Ewing v. *Mytinger & Casselberry, Inc., supra,* at 599. Even in "exigent" circumstances, "the opportunity given for [an] ultimate [hearing must be] adequate." *Phillips* v. *Commissioner, supra,* at 597. *See Mitchell* v. *W. T. Grant Co., supra,* at 4675; *Arnett* v. *Kennedy, supra,* at 4537 (White, J., concurring and dissenting).

The Court has held that when property is seized to protect against a bank failure, there must be a hearing at some time. *Fahey* v. *Mallonee,* 332 U.S. 245 (1947). When property is seized to protect the public from misbranded drugs or contaminated food, there must be a hearing at some time. *Ewing* v. *Mytinger & Casselberry, Inc.,* 339 U.S. 594 (1950); *North American Cold Storage Co.* v. *Chicago,* 211 U.S. 306 (1908). Even when property is seized to meet the needs of a war effort, there must be a hearing at some time. *Central Union Trust Co.* v. *Garvan,* 254 U.S. 554, 556 (1921); *Stochr* v. *Wallace,* 255 U.S. 239 (1921). These were "extraordinary situations". *Boddie* v. *Connecticut, supra,* at 379. If the requirement of some hearing was in force then, it must be in force for wholly ordinary "suspensions" from the public schools. If the exigencies of wartime cannot overcome the right to a meaningful hearing, neither can any supposed exigencies in the public schools. Indeed, if the needs of wartime cannot abrogate this most basic requirement of procedural due process, nothing can.

(3) There are two final considerations that sometimes affect Due Process rights. A "weighing" of the interests at stake may affect the *form* or the *timing* of the hearing required by Due Process. *Mitchell* v. *W. T. Grant Co., supra,* at 4672-4674; *Arnett* v. *Kennedy, supra,* at 4531 (Powell, J., concurring), 4537-4541

(White, J., concurring and dissenting). By the same token, an assessment of the inherent trustworthiness of a challenged process may also affect the *form* or the *timing* of a hearing. *Mitchell* v. *W. T. Grant Co., supra,* 4674-4677; *Arnett* v. *Kennedy, supra,* at 4531 (Powell, J., concurring), 4537-4538 (White, J., concurring and dissenting). See pages 56-65 below. But these considerations, once again, are confined to form and timing. They do not affect the basic right to a fair hearing at *some* stage.

This was made clear—if it was not already clear—last Term. The Court upheld the *ex parte* "sequestration" of possessions. It balanced the interests and concluded prompt action was necessary. It also concluded that the "sequestration" process, proceeding through submission of documentary proof of simple facts to a judicial officer, was a trustworthy one. But these conclusions led it to a narrow holding: It held only that there need be no hearing *before* the property was seized. *Mitchell* v. *W. T. Grant Co., supra.* These conclusions did not affect the right to a fair hearing at some time. Indeed, the Court stated flatly that "a hearing must be had" by the time the seizure of property becomes "final." *Id.* at 4675.

Also last Term, certain members of the Court applied these same considerations to determine that a federal employee is not entitled to a hearing before his dismissal. But, there again, they emphasized that the employee had a Due Process right to a full and fair hearing at a later time, before the dismissal became "final." *Arnett* v. *Kennedy, supra,* at 4530-4532 (Powell, J., concurring), 4532-4541 (White, J., concurring and dissenting).

In the present case, the "suspensions" of the children are long since "final." Thus, whatever may be the balance of interests at stake, whatever may be the trustworthiness of the initial "suspension" process, whatever the form and timing of the hearing required by Due Process, a hearing at some time was required. That hearing was never granted to the children in Columbus.

No device—not an idea of "insignificant" or "de minimus" interests, not a doctrine of "exigent" circumstances, not a "weighing" of interests, and not an evaluation of the trustworthiness of the challenged procedure—can undermine the basic principle of Due Process. The simple right to a fair hearing, of some kind at some time, cannot be compromised. If it were, Due Process would mean nothing.

The conclusion cannot be escaped: The Columbus "suspension" procedure, without provision for a fair hearing at any time, is unconstitutional. It is not just *prima facie* unconstitutional. It is simply unconstitutional.

IV. THE REALITIES OF SCHOOL "SUSPENSION" SUPPORT THE DISTRICT COURT'S HOLDING THAT DUE PROCESS REQUIRED A "HEARING PRIOR TO SUSPENSION OR WITHIN A REASONABLE TIME THEREAFTER"

It is settled that Due Process required a "meaningful" hearing at some time for the children "suspended" from the public schools of Columbus. The issues that remain are: At what time were they entitled to a hearing? What form of hearing was mandated by Due Process?

The District Court did not decide the issue of form. It did suggest that an "informal" proceeding, without counsel or trial-type trappings, would satisfy

Due Process.[28] But it did not require any one procedure. There was no need to do so; the unconstitutionality of the "suspension" process was established without addressing the issue. So, the District Court concluded that the "choice of the best procedure for a particular school system should be left [, initially,] to the school officials charged with the administration of that school system."[29] The issue of form, therefore, will not be addressed here.

The issue of timing, however, is more pressing. The District court held that Due Process required a "hearing prior to suspension or within a reasonable time thereafter." Specifically, it indicated that a child must be given a prior hearing, except when there is an immediate need to remove him from the school, due to a threat of major disruption or violence. When immediate removal is necessary, the District indicated, the hearing may not be left until the full period of the "suspension" has gone by; rather, the hearing must be held "not later than 72 hours after the actual removal of the student from school."[30] This resolution of the problem of timing was correct.

Beyond requirement of a "meaningful" hearing at some time, Due Process does not mandate rigid procedures, as to either timing or form, to be applied in every conceivable situation. *See McKeiver* v. *Pennsylvania,* 403 U.S. 528, 543 (1971); *Stanley* v. *Illinois,*

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[28] Other federal courts have held that Due Process requires quite a full adversary hearing for "suspensions" of five or ten days or more, but only an informal hearing for shorter "suspensions." *See* pages 27-28 above. Such a distinction, in terms of the *form* of the required hearing, is not inappropriate.

[29] *Lopez* v. *Williams, supra* note 1, at 1302.

[30] *Id.*

405 U.S. 645, 650 (1972); *Mitchell* v. *W. T. Grant Co.*, 42 U.S.L.W. 4671 (1974). To determine what kind of hearing is required and when, the important considerations are ones of fact. Three aspects of a particular situation must be evaluated: (A) The risk of unfair or mistaken action that is inherent in the situation and the type of hearing needed to reduce the risk. (B) The harm that such action does to the individual. And (C) the extent to which the legitimate purposes of the governmental program in question would be furthered or frustrated by requirement of a prior hearing or a highly formal hearing. *See, e.g., Arnett* v. *Kennedy*, 42 U.S.L.W. 4513, 4530 (Powell, J., concurring), 4532 (White, J., concurring and dissenting) (1974); *Mitchell* v. *W. T. Grant Co.*, supra; *Astol Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 42 U.S.L.W. 4693 (1974).

Therefore, in this case, the timing of the hearing required by Due Process depends on an assessment of the realities of school "suspension". The realities are striking. They support the holding of the District Court. And they show that a fair hearing, before the actual "suspension" whenever possible, is essential to satisfy the purpose of the Due Process Clause.

A.

The Risk of Unfair or Mistaken School "Suspension" Is Truly Extraordinary: It Can Be Reduced Only by Requiring a Prior Hearing Whenever Possible.

There is some risk of unfairness or mistake whenever an official is empowered to deprive a person of life, liberty or property.[31] That is why the Due

[31] Of course, this is particularly true when there is no prior adversary hearing. "When an administrative agency acts on

Process Clause requires not only that there be a hearing conducted "in a meaningful manner," but also that it be held "at a meaningful time." *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965). "A meaningful time," generally, is *before* a deprivation initially takes place. *E.g., Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 343 (1969) (Harlan, J., concurring); *Boddie* v. *Connecticut*, 401 U.S. 371, 378-379 (1971); *Bell* v. *Burson*, 402 U.S. 535, 532 (1971); *Fuentes* v. *Shevin*, 407 U.S. 67, 80-82 (1972); *Board of Regents* v. *Roth*, 408 U.S. 564, 569-570 (1972). For, if the hearing were not held then, it could hardly reduce the ever-present risk of arbitrary deprivation of protected interests. If it were not held then, it could not serve the purpose of the Due Process Clause: to minimize such deprivations.

There are situations, however, where official safeguards against arbitrary action are very great and very effective. The risk of unfairness and mistake, correspondingly, is low. The Court has held that in such situations a later hearing, before a deprivation becomes "final", will satisfy Due Process. *Mitchell* v. *W. T. Grant Co., supra,* at 4674, 4676-4677. *See Arnett* v. *Kennedy, supra,* at 4531 (Powell, J., concurring), 4538-4539 (White, J., concurring and dissenting). The question is whether the present case falls into this category. It does not.

There are three factors by which to gauge the risk of arbitrariness inherent in a particular situation.

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incomplete information, untested by the adversary process and untempered by an opportunity for deliberation, it is far more likely to err." Freedman, *Summary Action by Administrative Agencies*, 40 U.CHI.L.REV. 1, 27 (1972).

(1) Does the deprivation take place in a relatively cool atmosphere, where any motivation for arbitrary action is slight and relations among the persons involved relatively uncomplicated. (2) What official makes the deprivation decision? Are there safeguards inherent in his office? (3) On what basis does he make the decision? Are there safeguards of requisite proof before he may act? When each of these factors is examined in the context of school "suspensions," it becomes clear that the risk of arbitrariness is extraordinarily great.

(1) The atmosphere in most public schools, as anyone knows, is anything but cool, anything but calm. The physical surroundings, themselves, make the point: "Bells ringing, buzzers sounding, public address systems making all those announcements, thousands of noisy adolescents pushing and shoving their way through crowded halls and stairways, locker doors banging . . . and so on." Bailey, DISRUPTION IN URBAN PUBLIC SECONDARY SCHOOLS 28 (1970). On top of that, in recent years, unrest in public secondary schools has been increasing. *Id.* at 7-12 (describing three major studies of high school unrest). There may be "clashes produced by mixing large numbers of young people and adults who come from very different . . . racial and ethnic strands." *Id.* at 26, 30. And, often, "certain school practices," such as restrictive dress or behavior rules, "can foment dissatisfaction." *Id.* at 26. Administrators and teachers are far from immune to this unsettling atmosphere. In particular, there may be a "serious lack of communication . . . . when older teachers stay on in a school that has become very different in its ethnic and income characteristics." *Id.* at 30.

In this charged atmosphere, arbitrariness inevitably takes root and flourishes. The motivations for arbitrary, even malicious, accusations of misconduct are legion. Outside quarrels may carry over into the school. A student may make a false accusation against a rival; a member of one racial or ethnic group may make a false accusation against a member of another. And, more important, an administrator or teacher, harried and wishing to be rid of certain students, may color ambiguous facts, or simply lie, out of frustration. Administrators and teachers, after all, come from particular ethnic and racial groups as do students; like students, they mix every day with others they find alien or dislike; they, too, often give way to the tension.

The data, showing the extraordinary numbers of minority children "suspended" from school, simply reveal one aspect of the arbitrariness that is the inevitable characteristic of school discipline. *See* Southern Regional Council & Robert F. Kennedy Memorial, THE STUDENT PUSHOUT: VICTIM OF CONTINUED RESISTANCE TO DESEGREGATION (1973); pages 21-23 above. The Ohio school districts reporting to the U.S. Office of Civil Rights, for example, "suspended" only 3.7% of their white pupils, but 7.8% of their minority pupils, in a single school year. The minority children made up 36.4% of their total enrollment; but they accounted for 55.1% of their "suspensions".[32] The inference of arbitrary "suspension" is strong. How many other arbitrary, individual "suspensions" occur cannot be measured. For, if there *never* is a hearing on a "suspension", it can never be shown that the facts did not justify it.

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[32] *See* note 16 above.

The risk of arbitrariness, then, is inherent in the situation. In *Goldberg* v. *Kelly*, 397 U.S. 254, 264 n. 12 (1970), the Court noted the "welfare bureaucracy's difficulties in reaching correct decisions on eligibility." The risk of mistakes there was significant. But it, surely, is greater here. Welfare officials do not live, day-in-day-out, with their clients in an atmosphere of continuing tension. They do not have to make their decisions on the spot, but can return to faraway offices. School administrators and teachers are not so fortunate. The consequent danger of arbitrariness cannot help but be more acute.

The Court has said that *ex parte* decisions made in judicial surroundings bear a low risk of arbitrariness. *Mitchell* v. *W. T. Grant Co., supra,* at 4676. But the courtroom or the judge's chambers is literally worlds away from the heated atmosphere of a public school. In the former context, Due Process may permit delay of a hearing; in the latter context, it may not.

(2) The second factor to consider is the nature of the official—the school administrator—who decides to deprive an individual of a protected interest. Are there safeguards against arbitrariness inherent in his office? The Court has held that there are such safeguards inherent in the office of a judge, and that a judge may be counted upon to minimize the risk of arbitrary action. *Mitchell* v. *W. T. Grant Co., supra,* at 4676. But a school administrator, skilled as he may be, is no judge.

He, plainly, lacks the training in determining credibility, sifting facts for relevance, and assessing the adequacy of proof. That is a judge's job; the principal or assistant principal has other things to do. But, even more important, the school administrator,

unlike a judge, is hardly neutral or detached from the disputes that come before him.

He is intimately involved. Often, as in the cases of several of the Appellees, the administrator is witness, "prosecutor", and "jury", all rolled into one. Inevitably, the students charged with misconduct are individuals he deals with, for better or worse, every day; his evaluation of charges against them will be colored by what he already knows, by positive or negative personal feelings he has about them. By the same token, he is familiar with the teachers or students who make the accusations. He cannot set himself apart from past associations, conflicts, and likes or dislikes, however irrelevant they may be, when he is asked to "suspend" a child.

His "suspension" decisions, moreover, are subject to myriad pressures. He is not only familiar with the teachers and students who come before him. He must continue to work with them. He cannot help but be influenced, in determining the truth of "suspension" charges, by the internal politics" of the school. Teachers, indeed, hold a special power over him. They expect to be "supported" in their accusations against students. If they are not, they will join together to demand "support". The administrator is caught in a bind.

In this institutional context, the school principal or assistant principal is ill equipped to make *ex parte* determinations of fact that are predictably fair and reliable. He may be conscientious. But the risk of arbitrariness is inherent in his office.

What is more, there is no check on arbitrariness. The "suspension" decisions of a school principal are

often invisible. A judge's decisions are subject to public and professional scrutiny. *See Mitchell* v. *W. T. Grant Co., supra.* A federal bureaucrat's decisions are subject to control by superiors. *See Goldberg* v. *Kelly, supra; Arnett* v. *Kennedy, supra.* But principals, typically, are free from public scrutiny and superior control when they "suspend" children. In Columbus, Ohio, the central school authorities reported to the U.S. Office of Civil Rights that they had no information at all on how many students their principals had "suspended" in the 1972-1973 school year.

(3) The inherent risk of arbitrariness depends, finally, on the basis for the deprivation. What is required before it may take place? In some instances, there may be safeguards that will reliably screen out unfair or mistaken deprivations. Here, there were none.

In *Mitchell* v. *W. T. Grant Co., supra,* the Court found several safeguards which, it held, so reduced the risk of arbitrary action that a hearing could be delayed. First, the party seeking a seizure of possessions, in that case, was required by State law to post a bond and was liable in damages if the temporary seizure turned out to be wrongful. *Id.* at 4674, 4676. Second, that party was required to submit to a judge an affidavit stating the "specific facts" that justified the seizure. *Id.* at 4676. Third, the issue involved was "ordinarily uncomplicated", having nothing to do with "fault." *Id.* at 4674, 4676. And, fourth, the issue lent itself to simply "documentary proof" that could be shown to the judge. *Id.* at 4674, 4676-4677. These safeguards, taken together, were thought by the Court to "minimize the risk" of a wrongful deprivation and "corresponding[ly] de-

crease the utility of an adversary hearing which will be immediately available in any event." *Id.* at 4676, 4677.

Similarly, in *Arnett* v. *Kennedy, supra,* Mr. Justice Powell observed that there were safeguards to "minimize the risk of error" in removing a federal employee that permitted postponement of a hearing. He noted that the "employee is provided with 30 days advance written notice of the reasons for his proposed discharge and the materials on which the notice is based. He is accorded the right to respond to the charges both orally and in writing, including the submission of affidavits. . . . After removal, the employee receives a full evidentiary hearing, and is awarded back-pay if reinstated." *Id.* at 4531-4532. *See id.* at 4538-4539 (White, J., concurring and dissenting).

A school "suspension" in Columbus was not subject to these safeguards. There was, of course, no 30 day interval before "suspension", no requirement of a bond or liability in damages if an accusation proved false, and no sworn affidavits. Most important, the truth of the charge typically did not depend on "uncomplicated" issues. It was not subject to simple documentary proof. For, unlike the seizure of property in *Mitchell,* it depended on a determination of "fault."

There was, indeed, nothing to minimize the risk of arbitrary "suspensions", and everything to increase it. There was no strong deterrent to false accusations. In any event, the truth of an accusation would never be finally determined since there was no later hearing. "Suspensions" depended on spur-of-the-moment

charges. They were not clarified, supported or challenged through formal, to say nothing of sworn, statements. The school rules that students were accused of breaking were extremely vague,[33] permitting much leeway for unstructured discretionary application. And the factual issues involved—Did the student "intentionally" break a rule? Was it really *this* student who was seen smoking on school grounds? Who pushed whom first?—were highly complex. But they were resolved hastily and one-sidely.

The only prerequisite, in fact, to a "suspension' in Columbus was the oral accusation. To be sure, a student was sometimes permitted to join a "discussion" of the matter with the principal. But if he protested his innocence, the principal would automatically rely on the word of his accuser.[34] *See* page 10 above. This "discussion" could not screen out any mistakes.[35] And

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[33] The offenses with which the Appellees were charged illustrate the point. *See* page 13 above.

[34] The record shows that this was true if the accuser was a teacher; but the record is silent on whether the principal held a "discussion" at all when the accuser was another student.

[35] To be sure, when the Court has held that Due Process requires a prior hearing, it has often said that the hearing could be informal and limited to the "probable validity" of an initial deprivation. *E.g., Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 343 (Harlan, J., concurring); *Bell* v. *Burson*, 402 U.S. 535, 542 (1971); *Fuentes* v. *Shevin*, 407 U.S. 67, 97 (1972); *Morrissey* v. *Brewer*, 408 U.S. 471, 485-486 (1972). But the "discussion" at issue here was *not* such a prior hearing. In each of the past decisions requiring a hearing on "probable validity," the Court required that both sides be allowed to contest the question of "probable validity" and that the decisionmaker *consider* what *both* sides said. That was not done by the Columbus principals. Moreover, the "probable validity" hearings required in the past have always been preliminary to a full, later hearing, at which

there was nothing that could. The child was not just guilty as accused, he was guilty *because* he was accused.

Surely, then, this "suspension" process had none of those characteristics, reducing risks of arbitrary action, that have led the Court, in some cases, to permit delay of a fair hearing. The risks could be reduced, and the purpose of the Due Process Clause served, only by holding a fair hearing before "suspension".

B.

A Mistaken "Suspension" Does Serious Harm to the Child: It Can Be Prevented Only by Opportunity for a Prior Hearing.

Just as the risk of arbitrary "suspension" was great, so was the harm it inflicted on the children. It was a harm that could be avoided only by provision of a prior hearing. This is the second general consideration in the weighing of interests to determine whether Due Process mandates such a hearing.

The collateral harms of an arbitrary "suspension" are great by themselves. The record and briefs[36] are replete with description of the psychological cost imposed by such a "suspension" on a child. *See* page 15 above. If a child is in fact "innocent" and had no opportunity to prove it, he will be bewildered, frustrated and angry; fellow students and teachers will see

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the individual would be fully compensated for the temporary deprivation if it turned out to have been wrongful. That opportunity, also, was denied by the Columbus school officials. *See* note 43 *infra*.

[36] Brief of Appellees, at 33-34; Brief *Amicus Curiae* of National Association for the Advancement of Colored People *et al.*, at 10-14. The District Court's Findings of Fact include six clear psychological harms worked by arbitrary school "suspensions." *Lopez* v. *Williams*, *supra* note 1, at 1292.

him as a "troublemaker"; he, himself, may even come to accept that role.[37] Perhaps such consequences are too evanescent to achieve the status of a dollar bill under the Due Process Clause. Even an adult federal employee wrongfully discharged from his job, *see Arnett* v. *Kennedy, supra,* must feel frustration. But psychological harms should not be ignored here, because the individuals involved are not adults, but children, for whom such harms are magnified tenfold.

More tangible collateral harms are also amply illustrated in the record and briefs.[38] The permanent record kept of "suspension" is a time bomb that can explode to harm the child at unexpected times, in unexpected places. It is always available to the police. It is used in preparing teachers' recommendations of the child for jobs or higher education. *See* page 15 above. Again, these harms are speculative.[39] A discharged federal employee, too, must live with potentially harmful stigma of his discharge. But, once more, this case involves children. More opportuni-

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[37] In theory, a "suspended" child is sent home. In fact, if his parents work, he is sent out on the streets. There, feeling resentful and idle, he may well drift into delinquency.

Moreover, whether at home or on the street, the child labelled a "troublemaker" may well be reinforced in any tendencies he has to assume that role. *See* page 15 above.

[38] Brief of Appellees, at 34-38; Brief *Amicus Curiae* of National Association for the Advancement of Colored People *et al.*, at 15-16; Brief *Amicus Curiae* of National Committee for Citizens in Education *et al.*, at 18-20.

[39] The school authorities of Columbus, however, apparently believe that there are serious harms that do result from the record of "suspension". Why else would they have provided, in July 1973, that, in the future, all record of "suspensions" found to have been mistaken should be expunged? *See* pages 7-8 above.

ties are open to them; and more can be closed by the recorded label of "troublemaker".

While the collateral harms of "suspension", therefore, are serious, the crux of this case is the immediate harm done to the child: the exclusion from school for one or two weeks and the transfer to another school, or to a night school, that often follow. Each day of "suspension" earns the child a "zero". Each day's classes cover work that the child is not allowed to make up. The cumulative learning process in which one day's class builds on the day before is interrupted. The child is excluded from the only stable social setting he knows, other than his family. And, if his "suspension" serves as a predicate for transfer to another school, these harms are exacerbated.

To be sure, the harm might be greater if he were "expelled".[40] But one week of "suspension" is 6% of a school semester in Ohio; two weeks of "suspension" amount to 12% of the semester.[41] If snow were to close the schools for two weeks, would not the school authorities add on two weeks at the end of the school year to make up what was lost? If teachers went on strike for even one week, would not the

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[40] In fact, "suspensions" for a week or two have a way of expanding in duration, as they did in the cases of two of the Appellees. *See* page 13 above. Moreover, available data show that, in a single school year 39% of children "suspended" at least once were, actually, "suspended" twice, and 25% were "suspended" three or more times. *See* page 24 above. As the number of weeks lost mounts, the distinction between a "suspension" and an "expulsion" disappears.

[41] This calculation is based on the requirement in Ohio of a minimum school year of thirty-two weeks. Ohio Rev. Code § 3321.04.

authorities go to court, seeking a preliminary injunction on the ground that "irreparable harm" to education was being done? If the State of Ohio believes that school attendance for a full thirty-two week year is not of vital importance, then why has it made that attendance compulsory?[42]

Of course, precise measurement of the educational harm done by a "suspension" is impossible. If a child is "suspended" on the day of an important test or a particularly important class, the "suspension" even for one day might affect his grades for the year. In other circumstances, or for other individual students, no clear effect on grades will be observed. But Ohio's compulsory attendance law does not permit a child to leave school for one or two weeks simply on a showing that his grades would not be affected. By the same token, Due Process rights cannot depend on B-pluses and C-minuses.

What is important, for the purposes of the Due Process Clause, is that it is public schooling at stake. Schooling is the most important interest that a child has, besides the care of his family. Deprivation of schooling does not affect his present income, *see Sniadach* v. *Family Finance Corp., supra; Goldberg* v. *Kelly, supra; Arnett* v. *Kennedy, supra,* but it does affect his present intellectual and emotional growth. It does not affect his ability to drive a car or move around the country, *see Bell* v. *Burson, supra,* but it will affect his ability to move up through society. Education touches not only a child's interests in "property", but also in "liberty".

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[42] *Id.*

The Court has held that a few days' possession of a stereo was important enough to support a claim for a prior hearing. *Fuentes* v. *Shevin, supra.* This holding has been limited, but explicitly not overruled. *Mitchell* v. *W. T. Grant Co., supra.* Surely, if deprivation of a stereo for a few days must be preceded by a hearing, so must deprivation of schooling for two weeks.

Unlike a job, *Arnett* v. *Kennedy, supra,* or a stereo, *Fuentes* v. *Shevin, supra,* or a refrigerator, *Mitchell* v. *W. T. Grant Co., supra,* schooling lost cannot be quickly replaced. When a child is "suspended" from one school he cannot go out and find another one. Nor can he post a bond, *Sniadach* v. *Family Finance Corp., supra,* at 343 (Harlan, J., concurring); *Bell* v. *Burson, supra,* at 536; *Fuentes* v. *Shevin, supra,* at 85; *Mitchell* v. *W. T. Grant Co., supra,* at 4673, and undo his "suspension".

It is plain that only a prior hearing can avoid all of the harms worked by an arbitrary school "suspension". A later hearing could allow the child to enjoy a sense of bitter vindication. It could restore his standing in the school. It could result in expungement of official records of his "suspension" or in an order that he be allowed to make up work he missed. And, if held promptly while the child is still out of school, it could reduce his period of "suspension". These possible remedies—which, of course, were not provided by the Columbus school authorities—are significant and show the importance of requiring a hearing at *some* time. But they cannot undo the child's humiliation or his absence from the classroom learning process for several days. Even if there were provision for

damages, the child could not be made whole for his educational loss.

Schooling is not like a property interest whose only function is to produce income or immediate enjoyment. Temporary loss of an income-producing asset can be compensated later by a damage award. *See, e.g., Arnett* v. *Kennedy, supra; Astol Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 42 U.S.L.W. 4693 (1974). Temporary loss of enjoyment of household possessions can also be compensated by damages. *See, e.g., Mitchell* v. *W. T. Grant Co., supra.* But temporary loss of schooling, a cumulative learning process, cannot later be fully compensated, for the time has past and the damage has been done. [43]

C.

The Legitimate Goals of the Public Schools Would Not Be Frustrated by Requirement of a Minimally Fair Hearing Before, or Promptly After, "Suspension": To the Contrary, Those Goals Would Be Promoted by Such a Requirement.

The risk of arbitrary "suspension" is great. The resulting harm is serious. Only a prior hearing can reduce the risk and the harm. It remains only to determine the impact of such a hearing on the operation of the public schools.

Of course, the schools have an urgent need for discipline. Discipline is not the primary purpose of public education—that purpose, in the words of the Ohio courts, is to enable children to "realize their potential" [44]—but it is necessary, to a degree, if the pri-

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[43] For this reason, the prior hearing required by Due Process should not be limited only to the "probable validity" of the "suspension." *See* note 35 *supra.*

[44] *E.g., State* v. *Gans*, 151 N.E.2d 709, 713-714 (1958).

mary purpose is to be fulfilled. The power of public schools to discipline their students is not at issue here. What is at issue is (1) whether any purpose is served by unfair or mistaken "suspensions", and (2) whether requirement of a prior hearing to screen out arbitrary "suspensions" would seriously impede other school functions.

(1) The harm to be prevented by a prior hearing is simply the imposition of *unfair* or *mistaken* "suspensions". The question is whether those particular "suspensions" promote any legitimate school goal. They do not.

The purposes of discipline are not served by punishing an innocent person. A child subjected to an unfair or mistaken "suspension" learns nothing about obedience to school rules—unless he learns that the rules are meaningless in application. He learns no respect for those in authority. Frustrated and angry, he may *become* the "troublemaker" that school officials believe him to be. Discipline suffers.

Eventually, arbitrary "suspensions" will be widely recognized to be arbitrary. Any deterrence they may have achieved will crumble. For once "law and order" is perceived to be unfair, order breaks down. Charles Silberman has written that careless punishment in the schools "serves only to breed more defiance and destruction, which breeds more repression . . . especially when accompanied by . . . arbitrariness, racial prejudice, assumption of student guilt and general disregard of individual rights." Silberman, CRISIS IN THE CLASSROOM 340 (1970).

Arbitrary "suspensions" not only fail to serve a disciplinary purpose. They *dis*serve that purpose.

School administrators, therefore, have an interest in preventing them that runs parallel to the interest of their victims.

But there is more to it than that. "Suspensions" that are unfair or mistaken also *dis*serve a school purpose more fundamental than discipline. That is the purpose of educating children. The State law of Ohio obliges the schools to provide a free education to children who are "residents between six and twenty-one years of age." Ohio Rev. Code §§ 3313.48, 3313.64. And it mandates a thirty-two week school year. Ohio Rev. Code § 3321.04. When the schools arbitrarily remove such children from school, they undercut their own reason for existence.

Once the government establishes a program of welfare or paroles, the Court has said, it has an interest in ensuring that all eligible individuals benefit under the program. A hearing before termination of the benefit, the Court has held, promotes that governmental interest. *Goldberg* v. *Kelly, supra,* at 264-265; *Morrissey* v. *Brewer, supra,* at 483-484. Similarly, once the State establishes a system of public education, it has an interest in ensuring that all eligible children receive that education. A hearing before children are removed from school promotes that interest.

(2) But would a prior hearing, in and of itself, seriously impede school operations? It is sometimes suggested that such a hearing would (a) take time in which disruption could continue, (b) undermine the authority of school administrators, (c) break down the "parental" relationship between administrators and students, and (d) take teachers and administrators away from their educational duties. The latter three

arguments are plainly insufficient to obviate the Due Process requirement of a prior hearing. The first is sufficient only to qualify that requirement, not eliminate it.

(a) The District Court, in this case, did *not* hold that Due Process demands a prior hearing in *every* case of "suspension". Rather, it recognized that "immediate removal of a student" might be necessary in particular situations where the student would continue to disrupt the academic atmosphere, or endanger persons, or damage property.[45] This rule, if interpreted narrowly, is proper and eliminates any danger that could be created by a prior hearing.

In truly exigent and "extraordinary" situations, requiring prompt action, Due Process has traditionally permitted a hearing to be delayed. *E.g., Fahey* v. *Mallonee,* 332 U.S. 245 (1947); *Ewing* v. *Mytinger & Casselberry, Inc.,* 339 U.S. 594 (1950); *Astol Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 42 U.S.L.W. 4693 (1974). *See Boddie* v. *Connecticut,* 401 U.S. 371, 379 (1971). An imminent threat of continued disruption or physical violence in a public school would seem to justify delay of a hearing under this principle. But the threat must be genuinely imminent, and the threatened disruption substantial, if the principle is not to be abused and the purpose of procedural due process frustrated. Such emergency situations do exist. But they are truly "extraordinary".

It may be that some of the Appellees were "suspended" in circumstances that would have permitted delay of a hearing. But most were not. Two of them

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[45] *Lopez* v. *Williams, supra* note 1, at 1302.

were notified of their "suspension" after they had been allowed to finish the day and go home. (App. 128-129, 133.) They, apparently, had not presented any imminent threat. One was "suspended" after asking if she could leave school during the day. (App. 138-139). This was no threat to disrupt school operations.

Of course, these "suspensions" occurred at a time of confrontations and demonstrations in the schools. That fact might have permitted some hearings to be delayed. However, the record shows that when one fortunate student appeared with a lawyer in the middle of the demonstration, the principal was able to hold a hearing:

> "A. . . . We had one student, Mr. William C. Harris, and Ms. William Harris and their attorney came in. This was in about ten minutes of this incident. We had a hearing for this particular case, at that time.
>
> Q. Was that an unusual sort of procedure? A. I would say that was unusual when someone comes in with an attorney, yes, this is unusual."

(App. 101.) And, in cases of the Appellees, hearings were not simply delayed. They were *never* held.

More importantly, the cases of these particular Appellees are not the only ones at issue here. This is a class action. The members of the class are all children "suspended" from the Columbus public schools over a two-and-one-half year period. Most of them were not "suspended" at a time of confrontation. They were "suspended" in normal times.

In normal times, the rule of exigency will not usually apply. The many children who are "suspended" for

non-aggressive actions—such as smoking, drinking, dress code violations, tardiness, truancy or simply "goofing off"—are unlikely to create any disruption while they await a hearing. And the children "suspended" for more aggressive acts—such as fighting, swearing, "talking back" to a teacher, or throwing spit balls—are usually unlikely to remain aggressive once they are brought to the principal's office for a hearing.[46] Obviously, the countless children who are "suspended" arbitrarily, on the basis of unfair or mistaken accusations, pose no threat at all. Normally, then, there is time for a hearing without serious fear of trouble.

Clearly, this was the case in Columbus. The record indicates that principals usually held a "discussion" with students before "suspension". This "discussion", of course, was a hollow form. *See* pages 10 and 49 above. But, if there was no threatened disruption to delay the bogue "discussion", then there was none to justify delay of a fair hearing.

Finally, it should be plain that even in exigent circumstances where no prior hearing is held, a *prompt* hearing is still possible. A "cooling off" period may be justified. But to wait the full two weeks of a "suspension" is not justified. A day or two—the District Court suggested 72 hours—is more than enough time to "cool off," and then hold a fair hearing while the "suspension" can, at least, be reduced if found to be mistaken.

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[46] The survey of more than 8,000 households conducted by the Children's Defense Fund, *supra* note 24, revealed that of all the children in those households who had been "suspended" from school less than 40% had been charged with even minimally violent behavior, such as fighting or destruction of property.

(b) Nonetheless, it is sometimes suggested that holding hearings will undermine the authority of school administrators: It will allow their commands to be questioned; it will show that they often make mistakes; and it will make them more reluctant to "suspend" any children. These purported effects of a hearing requirement are hardly very weighty in the scales of the Due Process Clause.

A principal must have authority, to be sure. But he is not meant to be a dictator. "In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students." *Tinker* v. *Des Moines Indep. Community School District,* 339 U.S. 503, 511 (1969). That a principal's commands will be questioned, and that he will be shown to be fallible, then, are not events to be feared. They are inevitable facts of life under a Constitution that treats children "in school as well as out of school" as persons "possessed of fundamental rights which the State must respect." *Id.*

Requirement of a "suspension" hearing, in any event, will not greatly reduce the principal's power. The hearing will affect only the determination of facts, the determination that a student did violate a school rule. The principal will retain his discretionary power to act as he thinks best once a violation is established. "A simple factual hearing will not interfere with [this] exercise of discretion." *Morrissey* v. *Brewer, supra,* at 483.

Nor will a hearing requirement seriously undermine the principal's position in his school. At first, when the federal courts required schools to hold hearings,

the reaction was shock and dismay; anarchy seemed around the corner. But, now, many schools have experience with "suspension" hearings. They have found that fair procedures actually increase respect for authority. One principal has written that "when due process is followed . . . [t]he operation of the school can be greatly enhanced rather than disrupted or impeded." DeBruin, *Education and Due Process,* 90 EDUCATION 174, 182 (1969). Another has predicted that "[a]dministrators and teachers will come to learn that due process will strengthen, not weaken, their positions within their school and community." Ferguson, *Due Process—Is Now,* 57 NASSP BULL. 95, 99 (1973). This is to be expected. For the "moral authority of a conclusion [such as a "suspension"] largely depends on the mode by which it is reached. . . . No better instrument than due process has been found for generating the feeling . . . that justice has been done." *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 171-172 (1951) (Frankfurter, J., concurring).

It may be that requirement of a hearing will cause principals to "suspend" fewer children. Certainly, it will screen out "suspensions" that are demonstrably unfair or mistaken. But that will be a gain, not a loss, for the public schools. *See* pages 71-72 above. Just as certainly, if other "suspensions" are really necessary to school discipline, hearings will not stop them. So long as a principal has convincing evidence that a student broke a school rule, he can remove the student after a hearing just as he did without one.

Perhaps, also, a hearing requirement will cut down on "suspensions" in more marginal cases. In view of the shocking number of children now being thrown

out of school every year, however, it would be valuable all around for principals to think twice before imposing this extreme sanction. *See* pages 19-24 above. There are many disciplinary measures short of "suspension". In the last few years, public schools have begun to develop such alternatives. One principal recently told a conference of secondary school principals that he re-examined the use of "suspensions" in his school and determined that they were unnecessary in most cases. "In some cases," he said, "we realized that out-of-school suspensions would be needed; for example, in situations where hot tempers as a result of a fight required cool-off time away from school." But, for the other cases, he set up an "in-school suspension center" where students could continue their studies. "Students respect it," he concluded, "and it has cut down on many kinds of disciplinary problems in the school." Johnson, *Student Disciplinary Codes—What Makes Them Tick*, Speech Delivered to Annual Conference of the National Association of Secondary School Principals, February 2-7, 1973, at 4.

(c) If reduction of principals' authority, therefore, is no serious problem, there is still the common suggestion that "suspension" hearings will break down the close "family" relationship between school officials and students. To be sure, a hearing, setting accusers on one side and students on the other, may seem inconsistent with a "family" relationship. But, in plain fact, the public school is *not* a "family".

"In the modern school setting," with hundreds of students, administrators and teachers do "not and perhaps cannot have an individual, parent-like concern for a child's welfare." Buss, *Procedural Due Process for School Discipline*, 119 U.Pa.L.Rev. 547, 560 (1971).

It is particularly inappropriate to speak of a "family" relationship when the purpose is to throw a child out of school. Real parents cannot take any such action. A "suspension", after all, temporarily severs the very relationship that procedure without a hearing is said to preserve.

School officials may argue that "suspension" sometimes is in the best interests of the child. But the child, and his parents, have every right to disagree. If the parties stand at arms length, if there is a conflict of interests, it is inherent in the situation; it is not caused by any hearing requirement.

A relationship of mutual respect and trust, of course, is important in the public schools. But a hearing requirement will build such a relationship, not destroy it. Neither respect nor trust is fostered by one-sided decisionmaking so crucial to the child. One school administrator has written, "[suspensions] do not need to become wellsprings of discord or bitterness. By ensuring that [they] take place in accordance with due process and for specific serious acts, school [officials] will earn trust as they perform this important quasi-judicial function." Winston, *Expulsions and Due Process*, 54 PHI DELTA KAPPA 699 (1973).

(d) The final argument sometimes offered to oppose "suspension" hearings is that they will take time away from the educational functions of administrators and teachers. Hearings, of course, will take some time, but they need not take inordinate time. And what they do take will be time well spent.

The District Court, in this case, did not require "suspension" hearings to follow formal trial-type procedures. They may be quite informal and still be fair.

They may need to take no longer than an hour or so, in most cases. They may be held in the afternoon, after class hours, to avoid interference with the normal school day. The principal may appoint a special assistant, more insulated from the internal "political" pressures of the school, to preside at the hearings, and thereby free himself of the burden. He may opt for less drastic alternatives to "suspension". See page 78 above, in some cases to reduce the number of hearings necessary. The school, in other words, "is not without weapons to minimize" the cost of the hearings. *See Goldberg* v. *Kelly, supra,* at 266.

The process might seem inefficient, if the test of efficiency is removing as many children as quickly as possible from the school building. But, in the public school context, efficiency is measured not just in time and numbers, but also in fairness, good will and trust. Most important, efficiency is hardly served by countless mistaken "suspensions". An investment in hearings is an investment in reliable decisionmaking on a matter that touches the core of the public school's function. *See* page 72 above.

The time taken for hearings will not be taken *from* an educational function. It will be taken *for* an educational function. School officials would not "suspend" a student if they did not think it would serve a school purpose; thus, resources expended on "suspensions" are not unconnected to the school's "education." But, more fundamentally, the hearings themselves will "educate." A Policy Statement on Discipline issued by the Columbus Public School System proclaims "a responsibility to teach proper behavior patterns . . . necessary in a democratic society." (App. 55.) One of those

"behavior patterns" is embodied in the process of a fair hearing.

Time and again, the arguments of cost-saving and time-saving have been raised against enforcement of Due Process rights. Inevitably, a hearing takes an official away from other tasks. But, if the official has the time to deprive a person of liberty or property, he must take the time to do it fairly and carefully. Again and again, the Court has held that "the Constitution recognizes higher values than speed and efficiency." *Stanley* v. *Illinois*, 405 U.S. 645, 656 (1972). *See, e.g., Goldberg* v. *Kelly, supra; Morrissey* v. *Brewer, supra.*

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Thus, the District Court's holding that Due Process requires a "hearing prior to suspension or within a reasonable time thereafter" creates no horrible problems for the public schools. In fact, the hearing requirement will promote, rather than impede, legitimate school functions. When this State interest in the requirement is added to the fact that the present risk of arbitrariness is great and the resulting harm to individual children very serious, it is plain that the realities of school "suspensions", weighed in the balance, support the holding of the District Court.

V. AFFIRMANCE OF THE DISTRICT COURT'S HOLDING WILL NOT LEAD DOWN ANY SLIPPERY SLOPE

It is established that Due Process requires a fair hearing before, or promptly after, "suspension" of a child from public school. It is a short step—if a step at all—to the conclusion that this Court should, therefore, affirm the judgment of the District Court in this case. Yet there may be lingering doubts about the implications of such an affirmance: Should the Court

"become involved" in the administration of the public schools? Will a right to a hearing before "suspension" lead to hearings about all and sundry types of disciplinary sanctions in the schools?

A short answer to the first question is: It is not the Court, but the Constitution, that is "involved" when a public school treads on the fundamental rights of school children. The Court does not decide to tell school administrators what to do. It interprets the Constitution. The administrators, too, are capable of interpreting the Constitution's commands; and if they obey them, there need be no occasion by intervention by any court.

A somewhat longer answer to the question is: This Court has long been "involved" when public schools deny constitutional rights. It has reviewed the decisions of school authorities on what courses they will teach, *Meyer* v. *Nebraska,* 262 U.S. 390 (1923), what subjects may be mentioned in the courses, *Epperson* v. *Alabama,* 393 U.S. 97 (1968), what religious observances they will conduct, *e.g., Engel* v. *Vitale,* 370 U.S. 421 (1962), what patriotic observances they will require, *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624 (1943), and what sorts of "disruptive" conduct they may punish, *Tinker* v. *Des Moines Indep. Community School District,* 393 U.S. 503 (1969).

To be sure, school officials have a broad discretionary authority that should not be too tightly constricted. But, already, the Court has reviewed the most particularized discretionary decisions by individual school principals in the context of the First and Fourteenth Amendments. *Tinker* v. *Des Moines Indep. Community School District, supra. See Healy* v. *James,* 408 U.S.

169 (1972). Here, the Court is asked to do no such thing. Rather, under the Due Process Clause, it is asked to review a broad statutory and regulatory policy and city-wide administrative practices in the Columbus schools. No individualized discretionary decision is at issue.

School authorities, Mr. Justice Jackson wrote for the Court, "have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." *West Virginia State Board of Education* v. *Barnette, supra,* at 637. What is at stake in this case is whether youth will be taught "to discount" the principle of procedural fairness as a "mere platitude." Any hesitation to review school officials' actions, to resolve such a basic issue, should be quickly put aside. The Court has acted in the past. It should act now.

There should not be concern that a Due Process requirement of hearings on "suspensions" will lead, willy-nilly, to requirement of hearings on every conceivable disciplinary decision by school principals. Horribles are often paraded down slippery slopes for the purposes of argument; but, in fact, this Court is quite able to draw lines that conform to constitutional purposes. *See, e.g., Kirby* v. *Illinois,* 406 U.S. 682 (1972); *United States* v. *Kras,* 409 U.S. 434 (1973).

The issue in this case is limited to one extreme type of school punishment: *exclusion* from the school. "Sus-

pension" means deprivation of education, deprivation of an interest in "liberty" and "property". In-school punishments, on the other hand, need not work a deprivation of education. *See* page 78 above. The distinction is a clear one. It can be maintained. Other disciplinary sanctions, such as corporal punishment, may raise other problems under other constitutional provisions. But the affirmance of the District Court's Due Process holding here can be easily confined.

VI. CONCLUSION

For a case whose outcome will affect the lives of tens of thousands of children across the Nation, the issue here is remarkably simple. The children ask to be heard when the State deprives them of the one interest, besides their family, that means the most to them. They ask only that the allegations, underlying the deprivation, be tested through the most traditional process in Anglo-American law: a fair hearing. Here, as so often, the simplest issues are the most important.

The law of the Due Process Clause is almost as simple as the issue it must resolve. An interest in liberty and property is at stake. Therefore, there must be an opportunity for a fair hearing. The law is so clear that one marvels at the controversy that has surrounded it.

Yet controversy there is. The Appellants would have this Court hold that public education is an interest not protected whatsoever by the Due Process Clause. They would, thereby, tear down a thriving body of doctrine that has evolved, over ten years, in the lower courts. Amidst the ruins, many public schools that have sought to follow court rulings and develop fair procedures would be left to return to the old ways. The public schools that resist any change would be given the impri-

matur of this Court to continue the casual, no doubt careless, removal of children from the classroom.

It has taken time to bring the most ancient of procedural rights into the public schools. But progress has been made. Increasingly, school officials are adopting due process into their administrative curriculum. "It seems surprising", one principal wrote, "that we of the public schools, responsible for the education and development of young people, would have [had] to be told by the courts that young people are individuals—individuals with basic human rights. The developing philosophy in education for years has been to treat and teach students as individuals. The courts [have] recogniz[ed] and support[ed] this philosophy."[47] It would be a sad day indeed, if this court were now to scrap all of this progress, to hold that young people are not individuals with basic human rights once they enter the school building.

We urge the Court to put its hand to the task long undertaken by the lower courts, now joined by many school officials, that promises, one day, to assure children the fundamental fairness that is their birthright. We urge that the judgment of the District Court be affirmed.

Respectfully submitted,

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[47] Ritchie, *Due Process and the Principal*, 54 PHI DELTA KAPPA 697, 698 (1973).

APPENDIX A

Student Suspensions During the 1972-1973 School Year as Reported to the Office for Civil Rights

In the fall of 1973 the Office for Civil Rights (OCR) of the Department of Health, Education and Welfare for the first time included questions regarding student suspensions in its National School Survey of Public Elementary and Secondary Schools which is required under Title VI of the Civil Rights Act of 1964 and under Title IX of the Education Amendments of 1972. School districts were requested to provide for each school "the number of pupils suspended at least once from this school campus during the previous school year" and "the total number of suspension days from this school campus during the previous school year." (Form OS/CR 102, Items X. A.B.) In addition, each district was asked to include on the "School System Summary Report" a total, by race and ethnic group, of the number of pupils suspended at least once from any school campus in this system during the previous school year." (Form OS/CR 101, Item VII.B.)

In connection with a study it has undertaken of school-age children who are out of school, or who have special needs not met by their schools, the staff of the Children's Defense Fund did a detailed analysis of the suspension data submitted to OCR in five states—Arkansas, Maryland, New Jersey, Ohio and South Carolina. The Children's Defense Fund wanted to determine the extent to which suspensions were actually being used by school districts in those states, and the extent to which students were out of school as a result of suspensions. The school districts surveyed by OCR in the fall of 1973 represent over 50 percent of the pupils enrolled in public schools in these five states. More than 150 thousand students were reported suspended in these districts during the 1972-1973 school year.

In Tables I-V, the suspension data submitted by the 402 districts surveyed by OCR in the fall of 1973 are set forth

by state. For each district, information is included on the total number of students enrolled, the number of students reported suspended at least once during the 1972-1973 school year, the total number of suspension days (total number of days missed as a result of all suspensions) and the percentage of the enrollment that was suspended at least once. Brief summaries of the data set forth on Tables I-V follow.

ARKANSAS

(10,349 Students Suspended)

About 60 percent of the approximately 461 thousand students enrolled in Arkansas public schools in fall, 1972 were enrolled in the 147 school districts surveyed by OCR in fall, 1973. Almost four percent of the 270,338 students enrolled in the districts surveyed were suspended at least once during the 1972-1973 school year: 2.4 percent of the white students and 6.2 percent of the black students. Although over 60 percent of the students enrolled in the 147 districts surveyed were white, over 60 percent of the total students suspended were black. The 10,343 students who were suspended from the 146 surveyed districts reporting data on suspension days were suspended for over 49,500 days. Students in these Arkansas districts missed over 280 school years due to suspensions during the 1972-1973 school year.

Eighty nine percent of the secondary schools serving these 147 districts reported suspending students during the 1972-1973 school year. In the Fort Smith School District, almost 4.7 percent of the total secondary enrollment was suspended, whereas 2.3 percent of the total enrollment of that school district was suspended. The Pulaski County District suspended 4.5 percent of its total enrollment, but 9.1 percent of the secondary school students in the Pulaski district were suspended at least once during the 1972-1973 school year.

MARYLAND

(31,699 Students Suspended)

Almost 90 percent of the approximately 921 thousand pupils enrolled in public schools in Maryland in fall, 1972 were enrolled in the 18 districts surveyed by OCR in its Fall 1973 Survey. 3.9 percent of the total enrollment in the 18 districts was suspended at least once during the 1972-1973 school year, and in over 60 percent of the districts the percent of students suspended exceeded five percent. In the 17 districts which reported suspensions by race (the Baltimore City School District provided no racial statistics on suspensions), 3.9 percent of the total white students enrolled and 9.3 percent of the total black students enrolled were suspended. In the 17 districts reporting both the number of students suspended at least once and the total number of suspension days, more than 31,000 students were suspended for over 165 thousand days during the 1972-1973 school year.

In the 18 Maryland districts surveyed, over 93 percent of the secondary schools reported at least one student suspended. In the Prince Georges County School District, where 90 percent of the 10,333 students suspended were enrolled in secondary schools, 13.4 percent of the students in secondary schools were suspended compared to 6.4 percent of the district's total enrollment. In the Wicomico County School District, 12.7 percent of the secondary enrollment and 5.9 percent of the total enrollment was suspended.

These figures in fact understate the severity of the suspension problem in Maryland. The Baltimore City School District, which is over 69 percent black, reported the lowest percentage of suspensions (.9) of the eighteen Maryland districts surveyed by OCR. However, Baltimore City reported to OCR only those students who had been suspended for ten days or more. No student given a "disciplinary removal" or any other form of suspension for less than 10 days was included in these figures. Thus, the Baltimore data

is an undercount by itself, and sharply understates the aggregate percentage of suspensions in the eighteen districts surveyed.

NEW JERSEY

(36,732 Students Suspended)

Over 38 percent of the estimated 1.5 million pupils enrolled in New Jersey public schools in fall, 1972 were enrolled in the 102 school districts included in the OCR survey of fall, 1973. Ninety-five percent of the districts reported suspending students in the 1972-73 school year. Six percent of the total enrollment in these districts was suspended at least once during the 1972-73 school year; at least five percent of the white enrollment, seven percent of the black enrollment, and 3.4 percent of the Spanish-surnamed American enrollment. In forty-three of the districts, the percent of the total enrollment suspended exceeded the aggregate figure of 6.4 percent, and in over half of these more than 10 percent of the total enrollment was suspended. The 36,000 pupils suspended in the 99 districts reporting both the number of students suspended at least once and the total number of suspension days were suspended for over 158 thousand days.

Suspensions from secondary school show the severity of the suspension problem even more clearly. Over 90 percent of the secondary schools in the 100 districts reporting to OCR recorded at least one student suspended during the 1972-73 school year. In the Elizabeth School District, while 6.4 percent of the total enrollment in the district was suspended at least once, 13.8 percent of the students enrolled in the district's secondary schools were suspended. In Atlantic City, 7.2 percent of the secondary enrollment and 3.7 percent of the total enrollment was suspended.

OHIO

(36,602 Students Suspended)

Over 30 percent of the approximately 2.4 million pupils enrolled in Ohio public schools in the fall of 1972 were enrolled in the 47 districts surveyed by OCR in fall, 1973. The Columbus School District was the only district surveyed that reported it had no information available regarding suspensions. All but two of the remaining 46 districts reported at least one student suspended. 5.3 percent of the total pupils enrolled in these 46 districts in the fall of 1972 were suspended at least once; 8.0 percent of the total black enrollment and 3.7 percent of the white enrollment. Eight of the districts reported suspending over five percent of their white enrollment, while 31 districts reported suspending over five percent of their black students. A total of 36,602 pupils were suspended in the surveyed districts for a total of over 203 thousand days. Around the state, students missed at least 1,000 school years due to suspensions.

While these figures are striking, we know that the majority of suspensions occur at the junior and senior high school levels and thus that the percentages of secondary students suspended are even more striking. Over 90 percent of the 240 secondary schools in the districts surveyed reported suspending students. In the Dayton School District, where 6.5 percent of the total enrollment was suspended at least once during the 1972-73 school year, 15.7 percent of the secondary school students were suspended. In Toledo, 4.7 percent of the total enrollment was suspended at least once and 9.5 percent of th secondary enrollment.

SOUTH CAROLINA

(38,959 Students Suspended)

All of the 93 school districts in South Carolina were surveyed by OCR in the fall of 1973. Of the 630 thousand students enrolled in the 91 South Carolina districts for which suspension data were available, 6.2 percent were suspended

during the 1972-73 school year; 4.7 percent of the total white enrollment and 8.3 percent of the total black enrollment. In one third of the districts, the percent of total students suspended exceeded 6.2 percent. The percentage of the black enrollment that was suspended exceeded the percentage of the white enrollment that was suspended in over 80 percent of the districts reviewed. Whereas two thirds of the districts reviewed reported suspending over five percent of their black students, less than one third reported suspending that percentage of their white students.

The percentages referred to above reflect the percent of the total enrollment suspended at least once rather than the percent of the secondary enrollment suspended. Because the great majority of suspensions occur in junior and senior high schools, these figures actually understate the extent to which suspensions are being used.

TABLE I

ARKANSAS

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]					No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Altheimer	1,064	172	885	7			2 (2)	1 (1)	1 (1)	56 (252)	6 (26)	49 (223)	1 (3)		5.3	3.4	5.5	14.3
Arkadelphia	2,374	1,657	716			1	6 (2)	4	2 (2)	46 (127.5)	26 (71.5)	20 (56)			1.9	1.6	2.8	
Arkansas City	104	40	64				2 (0)	2										
Armorel	340	209	126	5			1 (0)		1									
Ashdown	1,992	1,321	671				4 (2)	2	2 (2)	31 (117)	19 (73)	12 (44)			1.6	1.4	1.8	
Augusta	1,154	623	527			4	3 (2)	2 (1)	1 (1)	28 (121)	8 (28)	20 (93)			2.4	1.3	3.8	
Barton-Lexa	890	370	520				3 (1)	2	1 (1)	52 (298)	24 (146)	28 (152)			5.8	6.5	5.4	
Bearden	636	378	258				2 (0)	1	1									
Beedeville	248	219	29				1 (0)		1									
Benton	4,030	3,774	253	3			7 (5)	4 (2)	3 (3)	166 (479)	130 (360)	36 (119)			4.1	3.4	14.2	
Blevins	450	254	196				2 (1)	1	1 (1)	17 (70)	4 (13.5)	13 (56.5)			3.8	1.6	6.6	
Blytheville	5,233	2,871	2,336	14	4	8	11 (6)	8 (3)	3 (3)	230 (1,341)	68 (237)	162 (1,104)			4.4	2.4	6.9	
Bradley	629	208	421				2 (1)	1	1 (1)	8 (178)		8 (178)			1.3		1.9	
Bright Star	296	212	84				1 (1)		1 (1)	5 (15)	4 (12)	1 (3)			1.7	1.9	1.2	
Brinkley	2,007	1,065	942				3 (3)	2 (2)	1 (1)	35 (228)	8 (38)	27 (190)			1.7	.8	2.9	
Camden	2,539	1,170	1,369				5 (3)	3 (1)	2 (2)	77 (356)	29 (127)	48 (229)			3.0	2.5	3.5	
Carlisle	868	740	128				2 (1)	1	1 (1)	5 (25)	4 (20)	1 (5)			.6	.5	.8	
Carthage	269	70	199				1 (1)		1 (1)	10 (100)	5 (50)	5 (50)			3.7	7.1	2.5	
Chidester	288	44	244				1 (1)		1 (1)	30 (90)		30 (90)			10.4		12.3	
Clarendon	895	583	312				3 (2)	2 (1)	1 (1)	7 (70)	4 (20)	3 (50)			.8	.7	1.0	
Collins	45	39	6				1 (0)	1										

TABLE I

ARKANSAS

1972-1973 Student Suspensions

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	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA	
Conway	3,512	2,963	547			2	6 (3)	4 (1)	2 (2)	24 (101)	18 (71)	6 (30)			.7	.6	1.1		
Corning	1,538	1,538					4 (0)	3	1										
Cotton Plant	586	72	514				2 (2)	1 (1)	1 (1)	16 (48)	2 (6)	14 (42)			2.7	2.8	2.7		
Crawfordsville	987	87	900				2 (1)	1	1[6] (1)	13 (39)	1 (3)	12 (36)			1.3	1.1	1.3		
Cross County	1,035	878	156			1	4 (1)	3	1 (1)	10 (30)	6 (18)	4 (12)			1.0	.7	2.6		
Crossett	3,198	2,379	819				7 (4)	5 (2)	2 (2)	61 (496)	22 (187)	39 (309)			1.9	.9	4.8		
DeValls Bluff	579	389	190				1 (1)		1 (1)	11 (33)	5 (15)	6 (18)			1.9	1.3	3.2		
DeWitt	1,635	1,374	261				4 (2)	3 (1)	1 (1)	27 (81)	15 (45)	12 (36)			1.7	1.1	4.6		
Delta Special	803	421	382				3 (2)	2 (1)	1 (1)	4 (49)		4 (49)			.5		1.0		
Dermott	1,404	382	1,007			15	2 (1)	1	1 (1)	13 (43)	3 (14)	10 (29)			.9	.8	1.0		
Desha County	102	14	85	3			2 (0)	2											
Desha-Drew	401	84	317				2 (1)	1	1 (1)	5 (15)		5 (15)			1.2		1.6		
Dollarway	2,717	1,133	1,584				5 (2)	3	2 (2)	83 (245)	8 (24)	75 (221)			3.1	.7	4.7		
Drew Central	715	500	214			1	1 (1)		1 (1)	23 (80)	11 (44)	12 (36)			3.2	2.2	5.6		
Dumas	2,542	1,059	1,483				4 (2)	3 (1)	1 (1)	77 (402)	22 (116)	55 (286)			3.0	2.1	3.7		
Earle	1,409	373	1,031	4		1	4 (4)	2 (2)	2 (2)	212 (1,544)	31 (250)	181 (1,294)			15.0	8.3	17.6		
El Dorado	5,898	3,600	2,298				14 (5)	10 (1)	4 (4)	660 (2,701)	247 (863)	413 (1,838)			11.2	6.9	18.0		
Elaine	1,141	323	781	34		3	3 (2)	1 (1)	2 (1)	30 (106)	11 (33)	17 (67)	2 (6)		2.6	3.4	2.2	5.9	
Emerson	441	223	218				1 (1)		1 (1)	10 (19)	4 (7)	6 (12)			2.3	1.8	2.8		
Emmet	158	112	46				2 (2)	1 (1)	1 (1)	6 (24)	2 (6)	4 (18)			3.8	1.8	8.7		
England	1,245	694	551				2 (1)	1	1 (1)	65 (196)	25 (75)	40 (120)			5.2	3.6	7.3		

Eudora	1,591	453	1,124	8		6	4 (2)	2	2 (2)	22 (93)	10 (44)	12 (49)			1.4	2.2	1.1			
Fairview	1,987	1,416	571				1 (1)		1 (1)	27 (82)	17 (57.5)	10 (24.5)			1.4	1.2	1.8			
Fordyce	1,446	824	619	3			4 (3)	3 (2)	1 (1)	40 (192)	6 (18)	34 (174)			2.8	.7	5.5			
Foreman	738	507	223	8			3 (1)	1	2 (1)	2 (2)	1 (1)	1 (1)			.3	.2	.4			
Forrest City	5,836	2,369	3,445	15	2	5	12 (6)	10 (4)	2 (2)	531 (3,302)	208 (1,121)	323 (2,181)			9.1	8.9	9.4			
Fort Smith	12,962	11,742	1,144	31	29	16	26 (9)	20 (4)	6 (5)	299 (1,665)	199 (931)	94 (716)		6 (18)	2.3	1.7	8.2			
Garland	179	52	127				1 (0)		1											
Gillett	445	368	77				1 (1)		1 (1)	4 (12)	3 (9)	1 (3)			.9	.8	1.3			
Glendale	300	187	113				1 (1)		1 (1)	1 (1)	1 (1)				.3	.5				
Gould	541	123	418				2 (2)	1 (1)	1 (1)	12 (267)	2 (14)	10 (253)			2.2	1.6	2.4			
Grady	682	184	498				2 (1)	1	1 (1)	4 (12)	1 (3)	3 (9)			.6	.5	.6			
Gurdon	1,040	678	362				3 (2)	2 (1)	1 (1)	19 (57)	13 (39)	6 (18)			1.8	1.9	1.7			
Guy Perkins	289	167	122				1 (1)		1 (1)	2 (6)	2 (6)				.7	1.2				
Hamburg	1,336	909	427				5 (2)	4 (1)	1 (1)	69 (210)	36 (108)	33 (102)			5.2	4.0	7.7			
Hampton	952	610	340			2	2 (1)	1	1 (1)	18 (56)	6 (23)	12 (33)			1.9	1.0	3.5			
Harmony Grove Sch. Dist. #1	666	453	213				1 (1)		1 [7] (1)	35 (124)	20 (69)	15 (55)			5.3	4.4	7.0			
Hazen	710	561	149				2 (1)	1	1 (1)	28 (155)	20 (115)	8 (40)			3.9	3.6	5.4			
Helena—West Helena	6,003	2,090	3,886	10	2	15	10 (4)	8 (2)	2 [8] (2)	274 (1,742)	67 (483)	206 (1,256)	1 (3)		4.6	3.2	5.3	10.0		
Hermitage	748	433	315				3 (0)	2	1											
Holly Grove	887	180	707				3 (3)	2 (2)	1 (1)	34 (104)	7 (23)	27 (81)			3.8	3.9	3.8			
Hope	2,899	1,849	1,050				8 (2)	6	2 (2)	67 (198)	25 (70)	42 (128)			2.3	1.4	4.0			
Hot Springs	5,780	4,362	1,409	5	1	3	12 (10)	9 (7)	3 (3)	378 (1,574)	173 (700)	204 (869)	1 (5)		6.5	4.0	14.5	20.0		
Hughes	1,840	509	1,311	12		8	2 (1)	1	1 (1)	32 (160)	6 (30)	26 (130)			1.7	1.2	2.0			
Humnoke	362	193	169				2 (2)	1 (1)	1 (1)	7 (24)	2 (6)	5 (18)			1.9	1.0	3.0			
Humphrey	365	204	161				2 (2)	1 (1)	1 (1)	11 (367)	3 (124)	8 (243)			3.0	1.5	5.0			
Huttig	296	166	130				1 (1)		1 (1)	12 (12)	6 (6)	6 (6)			4.1	3.6	4.6			
Junction City	1,007	573	434				2 (2)	1 (1)	1 (1)	23 (95)	7 (29)	16 (66)			2.3	1.2	3.7			

TABLE I

ARKANSAS

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School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Kingsland	222	153	65			4	1 (1)		1 (1)	3 (66)	2 (6)	1 (60)			1.4	1.3	1.5	
Lake Village	1,689	586	1,087	7		9	4 (3)	2 (1)	2 (2)	102 (366)	19 (60)	82 (303)	1 (3)		6.0	3.2	7.5	14.3
Lakeside	1,890[6]	1,880		7	2	1	3 (1)	2 (1)	1	6[10]	6				.3	.3		
Lawson	35	18	17				1 (0)	1 (0)										
Lepanto	801	672	117	12			1 (1)		1 (1)	2 (28)	1 (14)	1 (14)			.2	.1	.9	
Lewisville	771	343	428				3 (0)	2	1									
Linwood	364	19	345				2 (1)	1	1 (1)	1 (53)		1 (53)			.3		.3	
Little Rock	22,348	11,921	10,362	28	25	12	39 (35)	31 (27)	8 (8)	1,474 (9,327)	309 (1,694)	1,165 (7,633)			6.3	2.6	11.2	
Lockesburg	461	379	82				1 (1)		1 (1)	2 (3)	1 (2)	1 (1)			.4	.3	1.2	
Lonoke	1,707	1,128	579				3 (1)	2 (1)	1	9 (27)	2 (9)	7 (18)			.5	.2	1.2	
Luxora	777	384	386	7			2 (2)	1 (1)	1 (1)	21 (116)	8 (36)	13 (80)			2.7	2.1	3.4	
Magnolia	3,671	2,010	1,061				3 (2)	2 (1)	1 (1)	113 (412)	55 (170)	58 (242)			3.7	2.7	5.5	
Malvern	3,044	2,279	765				7 (3)	5 (1)	2 (2)	126 (464)	92 (338)	34 (126)			4.1	4.0	4.4	
Marianna	4,763	1,136	3,608	10	1	8	10 (5)	6 (1)	4 (4)	249 (1,200)	35 (183)	214 (1,017)			5.2	3.1	5.9	
Marion	1,987	1,040	944	3			5 (3)	3 (1)	2 (2)	40 (126)	11 (44)	29 (82)			2.0	1.1	3.1	
Marked Tree	1,387	1,056	331				3 (2)	2 (1)	1 (1)	79 (377)	44 (207)	35 (170)			5.7	4.2	10.6	
Marvell	1,749	359	1,390				4 (4)	2 (2)	2 (2)	92 (922)	22 (197)	70 (725)			5.3	6.1	5.0	
McCrory	965	742	223				3 (1)	2	1 (1)	4 (6)	2 (3)	2 (3)			.4	.3	.9	
McGehee	1,460	733	727				2 (1)	1	1 (1)	3 (30)	1 (10)	2 (20)			.2	.1	.3	
McNeil	417	139	278				2 (0)	1	1									
Mineral Springs	470	238	232				1 (1)		1 (1)	8 (66)	4 (33)	4 (33)			1.7	1.7	1.7	

Monticello	1,909	1,261	648				4 (3)	2 (1)	2 (2)	65 (321)	34 (180)	31 (141)				.4	2.7	4.8
Morrilton	2,368	2,068	298		2		5 (2)	3	2 (2)	61 (308)	53 (255)	8 (53)				2.6	2.6	2.7
Mount Holly	313	151	162				1 (1)		1 (1)	4 (20)	1 (5)	3 (15)				1.3	.7	1.9
Nashville	1,569	1,195	373	1			3 (2)	1	2 (2)	13 (65)	6 (30)	7 (35)				.8	.5	1.9
New Edinburg	275	176	99				1 (0)		1									
Newport	2,967	2,217	750				5 (1)	3	2 (1)	13 (39)	10 (30)	3 (9)				.4	.5	.4
Norphlet	636	443	193				1 (1)		1 (1)	7 (35)	5 (25)	2 (10)				1.1	1.1	1.0
North Little Rock	12,171	9,249	2,893	14	2	13	28 (7)	21	7 (7)	621 (2,113)	328 (1,149)	293 (964)				5.1	3.5	10.1
Okolona	184	18	166				1 (1)		1 (1)	1 (10)		1 (10)				.5		.6
Osceola	2,352	1,200	1,144	8			5 (4)	3 (2)	2 (2)	58 (407)	13 (91)	45 (316)				2.5	1.1	3.9
Palestine	744	453	291				2 (2)	1 (1)	1 (1)	9 (102)	5 (28)	4 (74)				1.2	1.1	1.4
Parkdale	175	8	167				2 (0)	2										
Parkers Chapel	292	252	40				1 (0)		1									
Parkin	1,113	405	695	13			3 (1)	2	1 (1)	14 (42)	6 (18)	8 (24)				1.3	1.5	1.2
Patmos	54	32	22				1 (0)	1										
Phillips County	472		472				2 (1)	1	1 (1)	3 (6)		3 (6)				.6		.6
Pine Bluff	8,459	4,526	3,912	10	2	9	18 (9)	13 (4)	5 (5)	181 (966)	51 (294)	130 (672)				2.1	1.1	3.3
Plum Bayou—Tucker	296	42	254				1 (1)		1 (1)	6 (30)	2 (10)	4 (20)				2.0	4.8	1.6
Portland	416	112	304				1 (1)		1 (1)	1 (3)		1 (3)				.2		.3
Prescott	1,368	808	550	6		4	3 (2)	2 (1)	1 (1)	27 (48)	8 (16)	19 (32)				2.0	1.0	3.5
Pulaski County	27,211	22,088	4,985	86	15	37	40 (27)	27 (14)	13 (13)	1,226 (3,697)	659 (1,709)	567 (1,988)				4.5	3.0	11.4
Rison	683	500	183				1 (1)		1 (1)	5 (10)	3 (6)	2 (4)				.7	.6	1.1
Ross Van Ness	108	78	30				1 (0)	1										
Russellville	3,827	3,685	122	2	14	4	8 (3)	6 (1)	2 (2)	78 (300)	69 (264)	9 (36)				2.0	1.9	7.4
Saint Charles	279	171	108				1 (1)		1 (1)	3 (9)	1 (3)	2 (6)				1.1	.6	1.9
Saratoga	339	116	223				1 (1)		1 (1)	5 (25)	2 (10)	3 (15)				1.5	1.7	1.3
Sherrill	257	39	214	4			2 (0)	2										

TABLE I

ARKANSAS

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Smackover	848	550	298				3 (2)	2 (1)	1 (1)	17 (79)	7 (22)	10 (57)			2.0	1.3	3.4	
South Mississippi	2,422	1,433	987			2	6 (1)	4	2 (1)	69 (58)	39 (32)	30 (26)			2.8	2.7	3.0	
Sparkman	542	272	270				1 (1)		1 (1)	21 (40)		21 (40)			3.9		7.8	
Stamps	967	472	495				3 (2)	2 (1)	1 (1)	39 (133)	14 (50)	25 (83)			4.0	3.0	5.1	
Star	1,238	934	304				3 (2)	2 (1)	1 (1)	2 (37)	1 (35)	1 (2)			.2	.1	.3	
Stephens	608	231	377				2 (0)	1	1									
Strong	737	225	512				3 (2)	2 (1)	1 (1)	14 (33)	7 (18)	7 (15)			1.9	3.1	1.4	
Stuttgart	2,621	1,643	978				6 (2)	5 (1)	1 (1)	80 (196)	23 (45)	57 (151)			3.1	1.4	5.8	
Taylor	423	267	156				1 (1)		1 (1)	5 (10)	2 (4)	3 (6)			1.2	.7	1.9	
Texarkana	6,545	4,334	2,196	4	7	4	10 (5)	7 (2)	3 (3)	199 (881)	66 (207)	133 (674)			3.0	1.5	6.1	
Thornton	414	180	234				2 (0)	1	1									
Tuckerman	820	711	109				1 (1)		1 (1)	5 (109)	4 (40)	1 (69)			.6	.6	.9	
Turrell	920	247	668	5			2 (1)	1	1 (1)	22 (55)	7 (21)	15 (34)			2.4	2.8	2.2	
Tyronza	307	235	72				1 (0)		1									
Union County	256	178	78				1 (0)		1									
Urbana	84	9	75				1 (0)	1										
Village	192	102	90				1 (1)		1 (1)	4 (30)	3 (27)	1 (3)			2.1	2.9	1.1	
Webbaseka	490	16	469	5			2 (1)	1	1 (1)	5 (17)		5 (17)			1.0		1.1	
Waldo	691	276	415				3 (2)	1	2 (2)	15 (45)		15 (45)			2.2		3.6	
Warren	2,032	1,232	800				5 (4)	2 (1)	3 (3)	30 (275)	10 (30)	20 (245)			1.5	.8	2.5	
Washington	301		301				3 (1)	2	1 (1)	5 (15)		5 (15)			1.7		1.7	

Watson Chapel	3,309	1,573	1,736				5 (2)	4 (1)	1 (1)	234 (1,204)		69 (252)	165 (952)				7.1	4.4	9.5					
West Memphis	7,045	3,333	3,712				13 (12)	8 (7)	5 (5)	687 (3,377)		219 (990)	468 (2,387)				9.8	6.6	12.6					
Wheatley	480	206	274				1 (1)		1 (1)	21 (63)		6 (18)	15 (45)				4.4	2.9	5.5					
Williford	295	295					2 (2)	1 (1)	1 (1)	4 (39)		4 (39)					1.4	1.4						
Willisville	80		6	74			? (U)		1															
Wilmar	367	126	241				2 (1)	1	1 (1)	6 (18)		1 (3)	5 (15)				1.6	.8	2.1					
Wilmot	479	81	393	5			2 (2)	1 (1)	1 (1)	13 (46)		1 (3)	12 (43)				2.7	1.2	3.1					
Wonderview	348	306	42				1 (0)		1															
Wynne	2,978	1,962	1,016				4 (2)	3 (1)	1 (1)	13 (34)		8 (22)	5 (12)				.4	.4	.5					
TOTAL (147 Districts)	270,338	166,716	102,843	473	108	198	587 (325)	370 (131)	217 (194)	10,349 (49,569.5)	11	3,974 (16,016.5)	6,363 (33,515)	6 (20)	6 (18)		3.8	2.4	6.2	1.3				

TABLE II

MARYLAND

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Anne Arundel Co.	77,083	66,881	9,713	182	93	214	97 (67)	78 (48)	19 (19)	2,801 (12,499)	2,031 (8,361)	754 (4,090)	12 (36)	4 (12)	3.6	3.0	7.8	6.6
Baltimore City	186,600	57,350	129,250				218 (143)	163 (95)	55 (48)	1,683[13] (64,183)					.9			
Baltimore Co.	131,987	125,677	5,604	260	51	395	175 (118)	132 (78)	43 (40)	6,945[13] (18,515.5)	6,386 (16,894.5)	403 (1,372)	10 (25)	5 (14)	5.3	5.1	7.2	3.8
Calvert Co.	6,287	3,125	3,161	1			15 (7)	13 (6)	2 (1)	418 (2,286)	165 (1,098)	253 (1,188)			6.6	5.3	8.0	
Caroline Co.	5,344	4,010	1,313	14	4	3	10 (8)	6 (4)	4 (4)	363 (962)	237 (628)	125 (331)	1 (3)		6.8	5.9	9.5	7.1
Charles Co.	15,681	10,036	5,592	9	9	35	27 (17)	23 (13)	4 (4)	1,048 (3,400)	429 (1,391)	618 (2,007)		1 (2)	6.7	4.3	11.1	
Dorchester Co.	6,373	3,745	2,618	4		6	22 (10)	17 (5)	5 (5)	567 (2,626)	194 (883)	373 (1,743)			8.9	5.2	14.2	
Harford Co.	32,418	29,062	2,994	159	58	145	39 (9)	32 (4)	7 (5)	1,470 (3,129)	1,325 (2,710)	143 (413)	2 (6)		4.5	4.6	4.8	1.3
Howard Co.	20,429	17,915	2,306	70	13	125	35 (21)	28 (15)	7 (6)	700[14] (1,685)	548 (1,329)	117 (241)	5 (8)	1 (1)	3.4	3.1	5.1	7.1
Kent Co.	3,880	2,647	1,233				9 (8)	8 (7)	1 (1)	209 (740)	99 (322)	110 (418)			5.4	3.7	8.9	
Montgomery Co.	126,707	113,795	8,131	2,690	194	1,897	197 (75)	147 (28)	50 (47)	1,974 (4,446.5)	1,605 (3,568.5)	329 (799)	32 (63)	7 (16)	1.6	1.4	4.0	1.2
Prince Georges Co.	161,969	119,033	40,397	1,137	191	1,211	235 (201)	176 (142)	59 (59)	10,333 (40,889)	5,842 (23,032)	4,438 (17,690)	38 (113)	15 (54)	6.4	4.9	11.0	3.3
Queen Annes Co.	4,717	3,386	1,330	1			11 (4)	9 (2)	2 (2)	123 (290)	57 (149)	66 (141)			2.6	1.7	5.0	
Saint Marys Co.	11,792	8,446	3,249	21	23	53	23 (9)	20 (7)	3 (2)	934 (4,841)	577 (2,976)	354 (1,854)	2 (8)	1 (3)	7.9	6.8	10.9	9.5
Somerset Co.	4,508	2,342	2,151	10		5	17 (12)	14 (9)	3 (3)	487[15] (1,416 5)	238 (665)	231 (697.5)			10.8	10.2	10.7	
Talbot Co.	4,983	3,361	1,622				12 (9)	10 (7)	2 (2)	224 (1,016)	116 (552)	108 (464)			4.5	3.5	6.7	
Wicomico Co.	14,371	10,087	4,278	2		4	27 (14)	20 (7)	7 (7)	842 (2,184)	438 (1,016.5)	404 (1,167.5)			5.9	4.3	9.4	
Worcester Co.	6,589	3,725	2,859		1	4	14 (8)	10 (4)	4 (4)	578[16]	239	339			8.8	6.4	11.9	
TOTAL (18 Districts)	821,718	584,623	227,801	4,560	637	4,097	1,183 (740)	906 (481)	277 (259)	31,099[17] (165,108.5)	20,527 (65,575.5)	9,165 (34,616)	102 (252)	35 (102)	3.		3.9[18] 9.3[19]	2.2

TABLE III

NEW JERSEY

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Asbury Park	3,515[20]	932	2,345	232		6	5 (5)	4 (4)	1 (1)	715[21] (1,952)	30 (93)	200 (407)	18 (51)		20.3[21]	3.2	8.5	7.8
Atlantic City	8,831	2,284	5,981	544	11	11	14 (6)	11 (3)	3 (3)	331 (2,040)	84 (523)	234 (1,437)	10 (66)	3 (14)	3.7	3.7	3.9	1.8
Bayonne	9,202	7,802	899	453	11	37	14 (1)	11 (1)	3	1 (1)	1 (1)				.01	.01		
Belmar	765	554	198	13			1 (1)	1 (1)		5 (15)	1 (3)	4 (12)			.7	.2	2.0	
Bradley Beach	539	460	6	67	4	2	1 (1)	1 (1)		39 (101)	30 (75)	2 (5)	7 (21)		7.2	6.5	33.3	10.4
Bridgeton	6,569	3,682	2,664	165	17	41	12 (10)	10 (8)	2 (2)	2,150[22] (7,379)	665 (2,242)	478 (2,068)	16 (73)	4 (15)	32.7[22]	18.1	17.9	9.7
Buena Regional	1,886	1,295	368	223			7 (5)	6 (5)	1	234 (708)	151 (469)	64 (183)	19 (56)		12.4	11.7	17.4	8.5
Burlington Co. Voc. Tech.	1,011	904	77	18	5	7	1 (1)		1 (1)	61 (125)	57 (116)	4 (9)			6.0	6.3	5.2	
Camden City	20,927	4,623	12,780	3,509	3	12	33 (23)	29 (20)	4 (3)	1,276 (12,364)	216 (2,193)	845 (7,874)	214 (2,292)	1 (5)	6.1	4.7	6.6	6.1
Cape May City	309	236	66	1		6	1 (1)	1 (1)		2 (6)	1 (3)	1 (3)			.6	.4	1.5	
Cape May Co. Voc. Tech.	389	344	45				1 (0)		1									
Carteret	4,547	3,943	278	320	1	5	7 (3)	6 (2)	1 (1)	210 (661.5)	153 (448)	48 (183.5)	9 (30)		4.6	3.9	17.3	2.8
Cedar Grove Township	2,643	2,565	42	9		27	6 (2)	5 (1)	1 (1)	43 (220)	41 (712)	1 (5)	1 (3)		1.6	1.6	2.4	11.1
Deptford Township	5,670	4,978	651	26	1	14	13 (5)	12 (4)	1 (1)	672 (2,289.5)	591 (1,954.5)	81 (335)			11.9	11.9	12.4	
Dover Town	3,608	2,590	249	744	4	21	5 (5)	4 (4)	1 (1)	98 (246)	53 (148)	17 (41)	28 (57)		2.7	2.0	6.8	3.8
Downe Township	358	260	86	10		2	2 (1)	2 (1)		97[23]					27 1			
East Greenwich Township	427	380	34	12		1	3 (0)	3										
East Orange	11,738	852	10,716	119	8	43	14 (8)	11 (5)	3 (3)	1,392 (3,654)	119 (258)	1,260 (3,370)	13 (26)		11.9	14.0	11.8	10.9
Eatontown	2,415	1,930	357	61	2	65	5 (2)	5 (2)		10 (26)	8 (22)	2 (4)			.4	.4	.6	
Egg Harbor Township	2,292	1,979	289	15	3	6	10 (6)	10 (6)		83 (502)	62 (328)	21 (174)			3.6	3.1	7.3	
Elizabeth	15,783	7,039	5,554	3,133	3	54	25 (16)	18 (9)	7 (7)	1,017 (6,735)	317 (1,863)	527 (3,685)	173 (1,187)		6.4	4.5	9.5	5.5

TABLE III

NEW JERSEY

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Englewood	4,195	1,850	2,202	120	2	21	7 (2)	6 (1)	1 (1)	118 (439)	9 (29)	109 (410)			2.8	.5	5.0	
Essex Co. Voc.	2,074	842	1,021	208		3	4 (2)		4 (2)	141 (341)	7 (13)	104 (254)	30 (74)		6.8	.8	10.2	14.4
Ewing Township	5,489	4,389	1,065	17	9	9	10 (8)	8 (6)	2 (2)	1,085[24] (3,004)	711 (1,899)	373 (1,104)			19.8	16.2	35.0	
Fairfield Borough	1,033[25]	1,019	2	11		1	2 (1)	2 (1)		3 (0)	3 (0)				.3	.3		
Fairfield Township	1,114[26]	318	765	25		6	2 (1)	2 (1)		211 (389)	58 (102)	153 (287)			18.9	18.2	20.0	
Florence Township	1,638	1,453	181			4	4 (3)	3 (2)	1 (1)	90 (138)	89 (136)	1 (2)			5.5	6.1	.6	
Franklin Township (Gloucester Co.)	1,299	1,102	156	31		10	6 (0)	6										
Franklin Township (Somerset Co.)	6,811	4,991	1,676	82	2	60	11 (4)	9 (2)	2 (2)	245 (1,015)	107 (333)	132 (644)	6 (38)		3.6	2.1	7.9	7.3
Freehold Borough	1,459	925	495	37		2	6 (4)	6 (4)		105 (99.5)	39 (35)	64 (62.5)	1 (1)	1 (1)	7.2	4.2	12.9	2.7
Glassboro	2,713	2,080	607	20		6	6 (3)	4 (1)	2 (2)	404 (1,208)	277 (723)	123 (474)	3 (8)	1 (3)	14.9	13.3	20.3	15.0
Greater Egg Harbor Regional	2,602	2,176	347	79			2 (2)		2 (2)	352 (609)	254 (431)	83 (144)	15 (34)		13.5	11.7	23.9	19.0
Guttenberg	566	484		82			1 (0)	1										
Hackensack	6,111	4,165	1,549	373	2	22	7 (4)	6 (3)	1 (1)	281 (531)	64 (190)	133 (331)	4 (10)		3.3	1.5	8.6	1.1
Hamilton Township (Atlantic Co.)	1,209	898	261	46	3	1	2 (2)	2 (2)		58 (225)	35 (135)	22 (87)	1 (3)		4.8	3.9	8.4	2.2
Harrison	1,845	1,598		245		2	3 (1)	2	1 (1)	6 (18)	5 (15)		1 (3)		.3	.3		.4
Highland Park	2,437	2,133	258	32	1	13	5 (2)	4 (1)	1 (1)	105 (310)	79 (229)	24 (78)	2 (3)		4.3	3.7	9.3	6.3
Hillside	3,754	3,014	630	83		27	6 5	5 4	1 (1)	371[27] (2,004)	276 (1,528)	75 (410)	11 (46)		9.9	9.2	11.9	13.3
Hoboken	7,829	2,899	476	4,443	6	5	8 1	6	2 1	14 (70)	8 (40)	2 (10)	4 (20)		.2	.3	.4	.1
Irvington	7,921	5,540	1,827	526	5	23	10 (8)	8 (6)	2 (2)	312 (1,797)	140 (757)	154 (956)	18 (84)		3.9	2.5	8.4	3.4
Jamesburg	1,164	1,018	146				3 (3)	2 (2)	1 (1)	12 (35)	8 (25)	4 (10)			1.0	.8	2.7	

Jersey City	38,616	13,912	17,548	6,906	22	228	37 (31)	33 (27)	4 (4)	953 [30] (7,949)	122 (1,542)	303 (4,320)	69 (802)	1 (12)	1.7 [30]	.9	1.7	1.0
Keyport	1,977	1,691	150	122	1	13	4 (2)	3 (1)	1 (1)	210 (1,038)	169 (763)	) 21 (120)	20 (155)		10.6	10.0	14.0	16.4
Lakewood	5,077	3,038	1,480	540	6	13	6 (3)	5 (2)	1 (1)	329 (1,619)	93 (381)	195 (1,047)	41 (191)		6.5	3.1	13.2	7.6
Lambertville	397	349	41	6	1		1 (1)	1 (1)		2 (6)	1 (3)	1 (3)			.5	.3	2.4	
Lawnside	498	1	496	1			1 (1)	1 (1)		75 (75)		75 (75)			15.1		15.1	
Lawrence Township (Cumberland Co.)	500	285	209	6			1 (1)	1 (1)		86 (734)	38 (295)	47 (431)	1 (8)		17.2	13.3	22.5	16.7
Lawrence Township (Mercer Co.)	3,502	3,075	391	13	1	22	7 (3)	5 (1)	2 (2)	127 (235)	94 (171)	31 (54)	2 (10)		3.6	3.1	7.9	15.4
Linden	6,998	4,993	1,772	213		20	15 (7)	12 (4)	3 (3)	691 (2,473)	427 (1,328)	248 (1,096)	16 (49)		9.9	8.6	14.0	7.5
Long Branch	5,562	3,265	1,692	569	2	34	10 (10)	8 (8)	2 (2)	768 (3,033)	305 (1,198)	395 (1,566)	68 (269)		13.8	9.3	23.3	12.0
Lower Camden Co. Regional	4,269	3,561	644	44	17	3	4 (4)		4 (4)	1,014 (3,729)	813 (3,151)	188 (523)	13 (55)		23.8	22.8	29.2	29.5
Magnolia	752	637	103	8		4	1 (1)	1 (1)		19 (84)	18 (78)	1 (6)			2.5	2.8	1.0	
Matawan Regional	6,756	5,949	718	67	4	18	8 (6)	7 (5)	1 (1)	553 (2,215)	380 (1,521)	172 (691)	1 (3)		8.2	6.4	24.0	1.5
Metuchen	3,265	2,922	279	47		17	5 (1)	4 (1)	1	3 (8)	1 (3)	2 (5)			.1	.03	.7	
Middle Township	2,458	1,928	512	14		4	5 (4)	4 (3)	1 (1)	325 (698)	218 (458)	103 (226)	3 (12)	1 (2)	13.2	11.3	20.1	21.4
Millville	5,851	5,198	469	173	6	5	8 (5)	6 (3)	2 (2)	555 (2,163)	375 (1,457)	171 (673)	9 (33)		9.5	7.2	36.5	5.2
Monmouth Regional	1,438	1,120	284	19		15	1 (1)		1 (1)	230 (878)	128 (438)	100 (438)	1 (1)	1 (1)	16.0	11.4	35.0	5.3
Monroe Township (Gloucester Co.)	3,796	3,109	657	22		8	4 (3)	3 (2)	1 (1)	206 (825)	116 (372)	87 (434)	3 (19)		5.4	3.7	13.2	13.6
Montclair	7,315	4,359	2,884	43		29	12 (5)	11 (4)	1 (1)	191 (593)	53 (125)	138 (468)			2.6	1.2	4.8	
Morris	6,916 [29]	5,356	1,412	88	1	59	12 (3)	10 (2)	2 (1)	120 [29] (229)	71 (109)	34 (92)	3 (4)		1.7	1.3	2.4	3.4
Mount Holly Township	2,110	1,510	486	93		21	5 (5)	5 (5)		106 (374.5)	66 (208.5)	34 (146)	4 (14)	2 (6)	5.0	4.4	7.0	4.3
Neptune Township	7,186	4,065	2,924	159	3	35	11 (9)	9 (7)	2 (2)	370 [31] (1,754)	67 (174.5)	111 (253.5)	3 (9)		5.1 [31]	1.6	3.8	1.9
New Brunswick	6,254	2,294	3,103	836	2	19	12 (6)	10 (4)	2 (2)	980 (3,936)	332 (1,051)	555 (2,557)	87 (314)	6 (14)	13.7	14.5	17.9	10.4
Newark	78,492	9,638	56,736	11,981	21	116	95 (61)	79 (46)	16 (15)	2,333 (15,226.5)	117 (747.5)	2,004 (11,507)	211 (2,971)	1 (1)	3.0	1.2	3.5	1.8
North Bergen	7,302	6,513	10	751	2	26	7 (4)	6 (3)	1 (1)	822 [32] (1,451.5)	22 (38.5)		6 (11)		11.3 [32]	.3		.8
Northern Burlington Co. Regional	2,293	2,042	203	26	2	20	1 (1)		1 (1)	576 (1,150)	526 (1,085)	46 (55)	3 (6)	1 (4)	25.1	25.8	22.7	11.5
Orange City	4,201	853	3,223	92	1	32	9 (4)	6 (1)	3 (3)	130 (390)	5 (15)	125 (375)			3.1	.6	3.9	
Palmyra	1,803	1,499	298	4		2	4 (3)	3 (2)	1 (1)	137 (294)	114 (243)	23 (51)			7.6	7.6	7.7	

TABLE III

NEW JERSEY

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Passaic	8,461	2,984	2,756	2,667	6	48	11 (9)	9 (7)	2 (2)	1,072 (7,291)	287 (1,307)	498 (4,247)	285 (1,732)	1 (5)	12.7	9.6	18.1	10.7
Passaic Co. Voc.	1,761	1,327	312	117		5	1 (0)		1									
Paterson	27,548	7,554	13,867	6,086	7	34	32 (28)	29 (25)	3 (3)	1,310[33] (6,673.5)	101 (692)	696 (4,051.5)	120 (660)		4.8[33]	1.3	5.0	2.0
Pemberton Township	7,904	5,180	2,023	468	27	206	12 (6)	10 (4)	2 (2)	519 (2,135)	318 (1,281)	176 (722)	24 (129)	1 (3)	6.6	6.1	8.7	5.1
Penns Grove-Upper Penns Neck Reg.	3,043	2,249	708	82		4	7 (7)	6 (6)	1 (1)	379 (1,795)	182 (764)	182 (989)	15 (42)		12.5	8.1	25.7	18.3
Perth Amboy	6,517	2,432	864	3,204	1	16	12 (4)	11 (3)	1 (1)	650 (1,544)	274 (556)	138 (344)	238 (654)		10.0	11.3	16.0	7.4
Piscataway Township	8,569	7,222	1,199	89	5	54	13 (5)	11 (4)	2 (1)	822 (2,901)	676 (2,348)	138 (536)	8 (17)		9.6	9.4	11.5	9.0
Plainfield	9,515	2,101	7,028	334	7	45	14 (8)	13 (7)	1 (1)	366 (1,526)	88 (417)	270 (1,072)	8 (37)		3.8	4.2	3.8	2.4
Pleasantville	3,612	1,580	1,907	125			6 (6)	4 (4)	2 (2)	420 (1,874)	155 (680)	250 (1,143)	15 (51)		11.6	9.8	13.1	12.0
Plumsted Township	797	696	69	32			1 (1)	1 (1)		20 (48.5)	14 (33.5)	4 (11.5)	2 (3.5)		2.5	2.0	5.8	6.3
Princeton Regional	4,281	3,839	344	17	4	77	7 (2)	6 (1)	1 (1)	142 (481)	99 (285)	43 (196)			3.3	2.6	12.5	
Rahway	4,989	3,651	1,180	131	8	19	7 (6)	5 (4)	2 (2)	755 (3,362.5)	534 (2,239)	208 (1,077.5)	13 (46)		15.1	14.6	17.6	9.9
Red Bank	1,397	597	694	97		9	4 (1)	4 (1)		6 (21)		5 (18)	1 (3)		.4	.7	1.0	
Roselle	3,453	2,007	1,346	81	2	17	6 (1)	5	1 (1)	411[24] (1,233)					11.9			
Scotch Plains-Fanwood Regional	7,652	6,831	769	23	1	28	11 (6)	8 (3)	3 (3)	71 (302)	37 (114)	33 (180)		1 (8)	.9	.5	4.3	
Somerdale	845	695	132	17		1	2 (1)	2 (1)		13 (27)	10 (21)	2 (4)	1 (2)		1.5	1.4	1.5	5.9
Somerville	2,960	2,481	411	60		8	6 (4)	5 (3)	1 (1)	263 (864)	209 (701)	43 (130)	11 (33)		8.9	8.4	10.5	18.3
Southern Gloucester Co. Regional	1,452	1,150	265	27	3	7	1 (1)		1 (1)	310 (817)	210 (620)	88 (176)	12 (21)		21.3	18.3	33.2	44.4
Teaneck	7,451	5,389	1,861	135	2	64	11 (5)	8 (2)	3 (3)	261 (941.5)	144 (487.5)	102 (426.5)	15 (27.5)		3.5	2.7	5.5	11.1
Teaneck Twp.	1,425	902	503	9	1	10	3 (2)	3 (2)		37 (179)	19 (70)	18 (59)			2.6	2.1	3.6	

Trenton	17,246	3,808	11,891	1,532	8	7	21 (8)	19 (6)	2 (2)	1,127 [35] (6,069)	326 (2,539)	729 (3,163)	63 (322)		6.5	8.6	6.1	4.1
Union City	9,194	3,226	37	5,894	3	34	9 (2)	6	3 (2)	4 (14)	1 (2)		3 (12)		.04	.03		.1
Union Township (Union Co.)	8,390	7,314	1,043	24		9	10 (10)	7 (7)	3 (3)	578 (2,114)	427 (1,564)	146 (531)	5 (19)		6.9	5.8	14.0	20.8
Upper Deerfield Township	1,195	1,009	107	24		55	2 (1)	2 (1)		44 (135)	38 (114)	5 (15)	1 (6)		3.7	3.8	4.7	4.2
Upper Freehold Regional	1,745	1,556	175	12		2	3 (2)	2 (1)	1 (1)	99 (237)	80 (200)	18 (34)	1 (3)		5.7	5.1	10.3	8.3
Vineland City	11,976	8,201	1,293	2,468	4	10	25 (9)	22 (6)	3 (3)	737 (2,733)	330 (1,232)	255 (952)	150 (543)	2 (6)	6.2	4.0	19.7	6.1
West New York	6,544	2,231	58	4,224	1	30	7 (4)	6 (3)	1 (1)	285 (1,388)	139 (675)	3 (15)	143 (698)		4.4	6.2	5.2	3.4
Willingboro Township	14,591	11,500	2,821	180	11	79	13 (7)	10 (4)	3 (3)	1,791 [36] (6,310)	16 (20)	11 (13)		1 (1)	12.3 [36]	.1	.4	
Winslow Township	1,549	1,151	333	59		6	6 (2)	6 (2)		4 (11)	3 (10)	1 (1)			.3	.3	.3	
Woodbine	352	76	166	110			1 (1)	1 (1)		6 (21)	2 (7)	2 (6)	2 (8)		1.7	2.6	1.2	1.8
Woodbury	2,498 [37]	1,906	579	6	2	5	5 (5)	4 (4)	1 (1)	105 (588.5)	43 (123)	62 (465.5)			4.2	2.3	10.7	
Woodstown-Pilegrove Regional	1,834	1,301	511	21	1		3 (3)	2 (2)	1 (1)	245 (519)	140 (296)	102 (217)	3 (6)		13.4	10.8	20.0	14.3
TOTAL (100 Districts)	573,017	289,834	213,325	67,332	299	2,227	843 (500)	692 (364)	151 (136)	36,732 [38] (158,533.5) [39]	14,322 (53,925.5)	14,783 (73,067)	2,308 (14,197)	29 (101)	6.4 [38]	5.0 [40]	7.0 [40]	3.4 [40]

TABLE IV

OHIO

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						No. of Schools (No. Reporting Suspensions)			Total Students Suspended At Least Once (Total Suspension Days)[4]					Percent of Total Enrollment Suspended At Least Once[5]			
	Total	White	Black	Sp. Surn. Am.	Am. Ind.	Asian Am.	Total	Elem.[2]	Sec.[3]	T	W	B	SSA	O	T	W	B	SSA
Akron City	54,329	38,483	15,679	58	10	99	67 (30)	47 (21)	20 (9)	1,175 (4,225)	905 (3,022.5)	269 (1,197.5)		1 (5)	2.2	2.4	1.7	
Alliance City	5,860	4,818	1,023	8	2	9	10 (5)	9 (4)	1 (1)	341 (1,762)	222 (1,071)	119 (691)			5.8	4.6	11.6	
Archbold Area Local	1,745	1,566		178		1	4 (0)	3	1									
Bloomfield-Mespo Local	619	520	95	4			3 (2)	2 (1)	1 (1)	8 (33)	5 (17)	3 (16)			1.3	1.0	3.2	
Campbell	2,385	1,855	316	209		5	5 (1)	4 (1)	1	4 (12)		2 (6)	2 (6)		.2		.6	1.0
Canton City	19,701	15,455	4,094	99	41	12	31 (23)	25 (17)	6 (6)	322 (1,500)	187 (795)	130 (688)	2 (6)	3 (14)	1.6	1.2	3.2	2.0
Cincinnati	77,878	40,763	36,808	88	26	193	108 (75)	82 (52)	26 (23)	2,782[41] (14,089)	956 (4,682)	1,597 (8,720)			3.6[41]	2.3	4.3	
Clearview Local	1,820	1,317	336	156	7	4	4 (3)	2 (1)	2 (2)	136 (970)	84 (550)	35 (309)	17 (111)		7.5	6.4	10.4	10.9
Cleveland	145,196	58,189	83,596	2,844	319	248	190 (129)	142 (86)	48 (43)	11,633 (75,218)	3,401 (14,882)	8,057 (59,345)	151 (865)	24 (126)	8.0	5.8	9.6	5.3
Cleveland Heights	11,650	10,181	1,212	130	13	114	17 (10)	12 (5)	5 (5)	119 (429.5)	83 (304.5)	36 (125)			1.0	.8	3.0	
Columbus	106,588	74,852	31,312	125	40	259	171	130	41	REPORTED	INFORMATION	"NOT	AVAILABLE"					
Dayton City	52,162	28,698	23,254	84	57	69	68 (54)	57 (43)	11 (11)	3,390 (21,852.5)	1,650 (9,133.5)	1,735 (12,678)	4 (36)	1 (5)	6.5	5.7	7.5	4.8
Defiance City	4,149	3,590	19	537	2	1	7 (3)	5 (1)	2 (2)	111 (768)	79 (556)	3 (9)	29 (203)		2.6	2.2	15.8	5.4
East Cleveland City	8,168	469	7,660	16	11	12	8 (6)	6 (4)	2 (2)	820 (2,682.5)	22 (79)	798 (2,603.5)			10.0	4.7	10.4	
Elyria City	14,037	11,906	2,026	73	17	15	22 (12)	16 (6)	6 (6)	1,143 (4,790.5)	724 (2,606.5)	415 (2,175.5)	2 (4)	2 (4.5)	8.1	6.1	20.5	2.7
Fostoria City	3,654	3,145	314	195			8 (2)	6	2 (2)	95 (771)	63 (459)	22 (269)	10 (43)		2.6	2.0	7.0	5.1
Fremont City	6,962	5,901	367	689		5	10 (6)	8 (4)	2 (2)	353 (2,389.5)	273 (1,734)	39 (249.5)	41 (406)		5.1	4.6	10.6	6.0
Garfield Heights City	5,686	5,387	278	6		15	7 (4)	5 (2)	2 (2)	202 (1,282)	185 (1,144)	17 (138)			3.6	3.4	6.1	
Hamilton City	14,287	12,768	1,481	13	9	16	24 (10)	18 (4)	6 (6)	664 (5,740)	494 (4,217)	160 (1,401)	2 (11)	8 (111)	4.6	3.9	10.8	15.4
Holgate Local	921	759		162			1 (1)		1 (1)	7 (54)	7 (54)				.8	.9		
Jefferson Township Local	2,716	800	1,913		1	2	5 (2)	3	2 (2)	210 (807)	29 (119)	180 (685)		1 (3)	7.7	3.6	9.4	

Lima City	9,997	7,174	2,759	48	8	8	18 (9)	14 (5)	4 (4)	819 (3,555.5)	387 (1,446.5)	431 (2,104)	1 (5)		8.2	5.4	15.6	2.1
Lockland City	1,045	888	155	2			3 (2)	2 (1)	1 (1)	45 (201)	32 (111)	13 (90)			4.3	3.6	8.4	
Lorain City	17,002	11,618	2,491	2,812	62	19	21 (13)	17 (9)	4 (4)	744 (3,776)	357 (1,545)	264 (1,614)	123 (617)		4.4	3.1	10.6	4.4
Madison Township	5,677	4,878	782	12	1	4	7 (6)	5 (4)	2 (2)	279 (1,696)	181 (1,136)	97 (560)		1 (0)	4.9	3.7	12.4	
Mansfield City	11,101	8,579	2,441	51	7	23	20 (10)	15 (5)	5 (5)	831 (4,850.5)	488 (2,788.5)	337 (2,026)	6 (36)		7.5	5.7	13.8	11.8
Massillon City	7,250	6,333	897	8	3	9	14 (6)	11 (3)	3 (3)	342 (1,666)	258 (1,295.5)	84 (370.5)			4.7	4.1	9.4	
Middletown City	13,103	11,516	1,555	17	2	13	25 (7)	22 (4)	3 (3)	574 (2,418)	429 (1,797)	145 (621)			4.4	3.7	9.3	
Mt. Healthy City	7,757	6,699	1,009	15	19	15	8 (6)	5 (3)	3 (3)	261 [42] (1,056)	30 (149)	12 (25)			3.4 [42]	.4	1.2	
North College Hill	2,278	2,014	248	11	5		4 (2)	3 (1)	1 (1)	79 (372)	48 (210)	31 (162)			3.5	2.4	12.5	
Ohio City-Liberty	472	400		72			1 (0)		1									
Old Fort Local	761	555	2	204			2 (1)	1	1 (1)	8 (20)	8 (20)				1.1	1.4		
Painesville City	3,411	2,737	636	24	4	10	8 (5)	6 (4)	2 (1)	356 (1,238)	241 (829.5)	113 (402.5)	1 (3)	1 (3)	10.4	8.8	17.8	4.2
Pettisville Local	664	574	6	84			1 (1)		1 (1)	1 (5)	1 (5)				.2	.2		
Princeton City	10,420	7,248	3,115	15	17	25	11 (5)	9 (3)	2 (2)	744 [43] (599.5)	299 (173)	445 (426.5)			7.1	4.1	14.3	
Sandusky City	6,943	5,173	1,697	65	5	3	13 (7)	10 (4)	3 (3)	362 (4,572)	142 (1,815)	212 (2,693)	8 (64)		5.2	2.7	12.5	12.3
Shaker Heights City	7,097	4,929	2,128	7		33	12 (7)	9 (4)	3 (3)	153 (403)	69 (167)	83 (234)	1 (2)		2.2	1.4	3.9	14.3
South-Western City	16,370	15,958	325	40	11	36	26 (11)	23 (8)	3 (3)	729 (5,839)	682 (5,475)	46 (356)		1 (8)	4.5	4.3	14.2	
Springfield City	16,536	12,640	3,829	26	21	20	30 (17)	22 (9)	8 (8)	857 (5,247)	424 (2,251)	428 (2,974)	4 (17)	1 (5)	5.2	3.4	11.2	15.4
Steubenville City	4,266	3,052	1,191	10	1	12	10 (6)	9 (5)	1 (1)	150 (975)	76 (543)	72 (424)		2 (8)	3.5	2.5	6.0	
Toledo	61,694	42,773	16,816	1,950	24	131	78 (60)	63 (45)	15 (15)	2,889 (10,829)	1,485 (5,899)	1,336 (4,628.5)	66 (295.5)	2 (6)	4.7	3.5	7.9	3.4
Warren City	13,733	10,303	3,373	25	16	16	22 (8)	19 (5)	3 (3)	396 (1,483)	173 (566)	222 (914)		1 (3)	2.9	1.7	6.6	
Warrensville Heights City	2,958	1,396	1,515	13	2	32	6 (4)	4 (2)	2 (2)	167 (1,056)	47 (317)	119 (735)	1 (4)		5.6	3.4	7.9	7.7
Xenia	8,271	7,311	933	9	9	9	11 (5)	8 (2)	3 (3)	576 (3,157)	473 (2,581)	103 (576)			7.0	6.5	11.0	
Yellow Springs Exempted Village	1,030	671	345	6		8	3 (2)	2 (1)	1 (1)	12 (38)	8 (24)	4 (14)			1.2	1.2	1.2	
Youngstown	24,114	12,365	10,780	893	31	45	41 (32)	27 (18)	14 (14)	1,563 [44] (8,592)	381 (1,748)	1,102 (6,517)	47 (223)	6 (25)	6.5 [44]	3.1	10.2	5.3
Zanesville City	7,716	6,809	897	6		4	18 (6)	14 (2)	4 (4)	150 (653)	123 (520)	27 (133)			1.9	1.8	3.0	
TOTAL (47 Districts)	802,179	516,015	271,708	12,099	803	1,554	1,183 (616)	902 (399)	281 (217)	36,602 [45] (203,673)	16,211 (78,838)	19,343 (119,906)	518 (2,957.5)	55 (323.5)				
TOTAL (Excluding Columbus)	695,591	441,163	240,396	11,974	763	1,295	1,012 (616)	772 (399)	240 (217)	36,602 [45] (203,673)	16,211 (78,838)	19,343 (119,906)	518 (2,957.5)	55 (323.5)	5.3 [46]	3.7	8.0	4.3

TABLE V.

SOUTH CAROLINA

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment[1]						Total Students Suspended At Least Once[47]					Percent of Total Enrollment Suspended at Least Once[8]				
	Total	White	Black	Span. Surn.	Am. Ind.	Asian Am.	T	W	B	SSA[46]	O[49]	T	W	B	SSA	O
Abbeville	4,306	2,321	1,985				232	91	141			5.4	3.9	7.1		
Aiken	24,326	16,504	7,735	11	69	7	1,782	815	967			7.3	4.9	12.5		
Allendale	2,430	557	1,873				157	39	118			6.5	7.0	6.3		
Anderson #1	4,253	3,658	590	3	1	1	166	120	45	1		3.9	3.3	7.6	33.3	
Anderson #2	3,946	3,044	898	3		1	451	264	187			11.4	8.7	20.8		
Anderson #3	2,286	1,631	655				160	65	95			7.0	4.0	14.5		
Anderson #4	2,257	1,520	737				16[50]					.7				
Anderson #5	12,523	9,622	2,887	5	6	3	696	394	302			5.6	4.1	10.5		
Bamberg #1	2,162	877	1,285				85	21	64			3.9	2.4	5.0		
Bamberg #2	1,757	287	1,470				90	14	76			5.1	4.9	5.2		
Barnwell #29	1,055	483	572				65	9	56			6.2	1.9	9.8		
Barnwell #45	2,116	1,199	917				155	70	85			7.3	5.8	9.3		
Beaufort	9,779	3,826	5,907	15	7	24	584	253	330	1		6.0	6.6	5.6	6.7	
Berkeley	18,493	11,271	7,072	54	8	88	682	363	319			3.7	3.2	4.5		
Calhoun #1	1,648	267	1,381				61	13	48			3.7	4.9	3.5		
Calhoun #2	758	4	754				9	0	9			1.2		1.2		
Charleston	55,562	28,241	26,965	155	47	154	4,272	1,927	2,329	11	5	7.7	6.8	8.6	7.1	2.5
Cherokee	8,639	6,218	2,419		2		1,153	667	486			13.3	10.7	20.1		
Chester	7,629	3,674	3,955				730	294	436			9.6	8.0	11.0		
Chesterfield	8,744	5,149	3,595				477	288	189			5.5	5.6	5.3		
Clarendon #1	2,009	2	2,007				27	0	27			1.3		1.3		
Clarendon #2	3,229	761	2,468				93	38	55			2.9	5.0	2.2		
Clarendon #3	1,310	571	739				58	23	35			4.4	4.0	4.7		
Colleton	6,992	2,602	4,387		3		614	161	453			8.8	6.2	10.3		
Darlington	13,310	5,991	7,315	2		2	572	160	412			4.3	2.7	5.6		
Dillon #1	1,513	616	887		10		41	14	27			2.7	2.3	3.0		
Dillon #2	4,863	2,262	2,484		117		222	81	137		4	4.6	3.6	5.5		3.4
Dillon #3	2,107	1,030	1,077				68	32	36			3.2	3.1	3.3		
Dorchester #1	1,694	438	1,256				52	10	42			3.1	2.3	3.3		
Dorchester #2	6,842	5,241	1,560	7	18	16	468	207	261			6.8	3.9	16.7		
Edgefield	3,649	973	2,676				242	63	179			6.6	6.5	6.7		
Fairfield	4,997	1,241	3,756				358	94	264			7.2	7.6	7.0		
Florence #1	14,221	8,266	5,950		3	2	1,080	449	630		1	7.6	5.4	10.6		20.0
Florence #2	1,623	813	810				139	46	93			8.6	5.7	11.5		
Florence #3	4,847	1,972	2,873		2		370	136	234			7.6	6.9	8.1		
Florence #4	1,537	180	1,357				136	15	121			8.8	8.3	8.9		
Florence #5	1,306	897	409				40	22	18			3.1	2.5	4.4		

Greenville	56,930	44,164	12,680	41	13	32	3,754	1,953	1,800	1		6.6	4.4	14.2	2.4	
Greenwood #50	9,720	6,139	3,559	18	2	2	1,078	401	677			11.1	6.5	19.0		
Greenwood #51	1,261	988	273				40	18	22			3.2	1.8	8.1		
Greenwood #52	1,403	941	462				68	41	27			4.8	4.4	5.8		
Hampton #1	2,496	1,155	1,341				54	24	30			2.2	2.1	2.2		
Hampton #2	1,940	321	1,619				0					0.0				
Horry	18,936	12,372	6,541	7	1	15	542	346	196			2.9	2.8	3.0		
Jasper	3,005	659	2,345			1	159	38	121			5.3	5.8	5.2		
Kershaw	9,008	5,259	3,741	3	1	4	517	244	273			5.7	4.6	7.3		
Lancaster	11,428	7,970	3,457	1			394	235	159			3.4	2.9	4.6		
Laurens #55	5,598	3,267	2,331				410	189	221			7.3	5.8	9.5		
Laurens #56	3,899	2,397	1,501	1			234	77	157			6.0	3.2	10.5		
Lee #1	4,520	679	3,840			1	103	24	79			2.3	3.5	2.1		
Lexington #1	5,609	5,070	538	1			191	133	58			3.4	2.6	10.8		
Lexington #2	11,374	10,088	1,260	8	5	13	834	607	227			7.3	6.0	18.0		
Lexington #3	2,661	1,672	989				132	47	85			5.0	2.8	8.6		
Lexington #4	1,290	825	462			3	57	37	20			4.4	4.5	4.3		
Lexington #5	5,962	5,315	643	1		3	235	144	91			3.9	2.7	14.2		
Marion #1	3,186	1,346	1,840				305	87	218			9.6	6.5	11.8		
Marion #2	3,248	1,219	2,027		2		67	9	58			2.1	.7	2.9		
Marion #3	966	152	814				21	6	15			2.2	3.9	1.8		
Marion #4	555	157	398				0					0.0				
Marlboro	7,694	3,443	4,239		11	1	309	60	249			4.0	1.7	5.9		
McCormick	2,384	501	1,883				102	21	81			4.3	4.2	4.3		
Newberry	6,604	3,639	2,965				180	52	128			2.7	1.4	4.3		
Oconee	10,417	9,195	1,216	3	3		457	251	206			4.4	2.7	16.9		
Orangeburg #1	1,376	479	897				79	27	52			5.7	5.6	5.8		
Orangeburg #2	1,166	171	995				68	14	54			5.8	8.2	5.4		
Orangeburg #3	4,211	586	3,625				45	9	36			1.1	1.5	1.0		
Orangeburg #4	1,627	753	873			1	64	28	36			3.9	3.7	4.1		
Orangeburg #5	6,681	2,097	4,580		4		156	34	122			2.3	1.6	2.7		
Orangeburg #6	1,354	553	801				21	9	12			1.6	1.6	1.5		
Orangeburg #7	1,128	190	938				43	8	35			3.8	4.2	3.7		
Orangeburg #8	604	258	346				9	3	6			1.5	1.2	1.7		
Pickens	13,473	11,950	1,507	2	4	10	686	560	126			5.1	4.7	8.4		
Richland #1	35,791[51]	15,423	20,314	22	6	26	4,085	1,066	3,019			11.3	6.9	14.9		
Richland #2	10,005	8,111	1,611	167	37	79	785	532	245	5	3	7.8	6.6	15.2	3.0	2.6
Saluda [52]	2,530	1,452	1,076	2			52	13	39			2.1	.9	3.6		
Spartanburg #1	3,965	3,159	797	7	2		174	114	60			4.4	3.6	7.5		
Spartanburg #2	5,586	4,683	899			4	110	77	33			2.0	1.6	3.7		
Spartanburg #3	3,480	2,674	806				157	93	64			4.5	3.5	7.9		
Spartanburg #4	2,628	1,955	673				107	62	45			4.1	3.2	6.7		
Spartanburg #5	4,085	2,918	1,167				125	68	57			3.1	2.3	4.9		
Spartanburg #6	7,095	6,006	1,083	1	3	2	142	106	36			2.0	1.8	3.3		
Spartanburg #7	12,295	7,505	4,766	15	6	3	841	378	463			6.8	5.0	9.7		
Sumter #2	10,377	4,425	5,884	31	14	23	815	323	490		2	7.9	7.3	8.3		5.4

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TABLE V.

SOUTH CAROLINA

1972-1973 Student Suspensions

School District	1972-1973 Student Enrollment [1]						Total Students Suspended At Least Once [47]					Percent of Total Enrollment Suspended at Least Once [5]				
	Total	White	Black	Span. Surn. Am.	Am. Ind.	Asian Am.	T	W	B	SSA [48]	O [49]	T	W	B	SSA	O
Sumter #17	10,797	5,237	5,547	5	3	5	277	120	157			2.6	2.3	2.8		
Union	7,205	4,400	2,793		12		541	264	277			7.5	6.0	9.9		
Williamsburg	9,957	2,072	7,885				388	102	286			3.9	4.9	3.6		
York #1	3,844	2,434	1,408		2		187	105	82			4.9	4.3	5.8		
York #2	2,610	1,837	771		2		253	139	114			9.7	7.6	14.8		
York #3	12,383	8,238	4,077	2	60	6	965	368	590		7	7.8	4.5	14.5		10.6
York #4	2,376	2,024	351	1			158	114	44			6.6	5.6	12.5		
TOTAL (91 Districts)	630,739	368,359	260,767	595	486	532	38,959[53]	17,233	21,669	19	22	6.2	4.7[54]	8.3[55]	3.2	2.2

TABLES I-V FOOTNOTES

[1] Unless noted otherwise, enrollment figures were taken from the *Directory of Public Elementary and Secondary Schools in Selected Districts, Enrollment and Staff by Racial/Ethnic Group,* Fall 1972, U.S. Department of Health, Education and Welfare, Office for Civil Rights. Because the suspension figures reported to the Office for Civil Rights in the fall of 1973 were for the previous school year, they had to be compared, where possible, to the school districts' enrollments in the fall of 1972.

[2] Generally, for purposes of these tabulations, any schools serving grade six or grades lower than six were classified as "elementary" schools. However, in districts operating only one school serving all 12 grades, the one school was classified as a secondary school. Ungraded schools and other special schools, such as those serving various types of handicapped students, were classified as elementary schools unless it was clear that the special schools served only secondary students.

[3] For purposes of these tabulations, "secondary" schools include single schools serving all twelve grades, other schools serving no grades lower than seventh grade, and ungraded schools and other special schools clearly serving junior and senior high school students.

[4] These figures were compiled from the Individual School Campus Reports (Form OS/CR 102) submitted to the Office for Civil Rights of the Department of Health, Education and Welfare in the fall of 1973. Because the data regarding suspensions were not edited by the Office for Civil Rights, these tabulations represent conservative interpretations of the figures reported. Suspension figures for individual schools were not used unless information on both the number of students suspended at least once and the total number of suspension days was supplied. An exception to this rule was made if no suspension days were recorded for any of the schools in a district. The suspension data for individual schools were also not used when obvious errors were recognized. For example, when the number of students of a particular race that were suspended exceeded the total number of students of that race in the school in the 1972-1973 school year, neither the suspensions nor suspension days were counted. Obvious arithmetical errors were corrected. The figures compiled from the Individual School Campus Reports tend to be an undercount, not only for the reasons described above, but also because, in a number of the school districts reporting, "no information available" was recorded for certain schools, particularly junior

and senior high schools where suspensions are more apt to occur. Some school districts only reported to OCR suspensions over a certain number of days, thus many more students were affected by suspensions than are reflected here.

[5] It should be noted that these percentages tend to understate the extent to which suspensions are being used because they reflect the percentage of the total enrollment that was suspended at least once, while the great majority of suspensions occur at the junior and senior high school level.

[6] This school, in Crawfordsville, served grades 3-12.

[7] The Fall 1972 *Directory of Public Elementary and Secondary Schools*, p. 53, reflected that Harmony Grove School District No. 1 had two schools serving grades 1-6 and 7-12 respectively. In reporting its suspension data to OCR in the fall of 1973, Harmony Grove reported these two schools as one campus serving grades K-12. In order to accurately report the suspension data, the district was recorded as having one school.

[8] The Fall 1972 *Directory of Public Elementary and Secondary Schools*, p. 54, reflected that the Helena-West Helena School District had four secondary schools serving grades 7, 8, 9-10, and 11-12 respectively. In reporting its suspension data to OCR in the fall of 1973, Helena-West Helena reported these four schools as two campuses, one serving grades 7-8 and one grades 9-12. In order to accurately report the suspension data, the district was recorded as having two secondary schools.

[9] 1972-1973 enrollment figures were not available for the Lakeside School District, so 1973--1974 enrollment data from Form OS/CR 101 were used.

[10] No suspension days were recorded for the schools in the Lakeside School District.

[11] Because no suspension days were reported for the schools in Lakeside, the suspensions should not be counted when comparisons of suspensions and suspension days are made.

[12] The Baltimore City School District did not provide a racial breakdown of its suspension figures.

[13] There are 140 students in Baltimore County who were suspended for 210 days who are included in the total, but for whom no racial or ethnic breakdown was reported.

[14] There are 29 students in Howard County who were suspended for 106 days who are included in the total, but for whom no racial or ethnic breakdown was reported.

[15] There are 18 students in Somerset County who were suspended for 54 days who are included in the total, but for whom no racial or ethnic breakdown was reported.

[16] Because no suspension days were reported for any of the schools in Worcester County, the suspensions should not be counted when comparisons of suspensions and suspension days are made.

[17] There are a total of 1,870 students (suspended for 64,553 days) in four school districts who are included in the total of the number of students suspended and suspension days but for whom no racial or ethnic identification was reported.

[18] Because the Baltimore City School District did not provide a racial breakdown of suspended students, the white enrollment (57,-350) in the district was not counted when the percent of white students suspended in the surveyed districts was computed.

[19] Because the Baltimore City School District did not provide a racial breakdown of suspended students, the black enrollment (129,-250) in the district was not counted when the percent of black students suspended in the surveyed districts was computed.

[20] In order to accurately report the suspension data for the Asbury Park District, 1973-1974 enrollment figures had to be used because the middle school in Asbury Park was not included in the enrollment figures in the Fall 1972 *Directory of Public Elementary and Secondary Schools*, p. 821.

[21] There were 467 students in Asbury Park who were suspended for 1,401 days who are included in the total, but for whom no racial or ethnic identification was reported.

[22] There were 987 students in Bridgeton who were suspended for 2,981 days who are included in the total but not in the racial and ethnic breakdowns because no racial or ethnic data were provided for suspension days. If the 987 students (27 white, 430 black and 530 Spanish-surnamed American) had been counted, the percentages, by race and ethnic group, would have been 26.1, 34.1 and 32.5, respectively.

[23] The Downe Township District reported that it keeps no information on suspensions by race and no information on suspension days.

[24] There was one student in Ewing Township who was suspended for one day who is included in the total, but for whom no racial or ethnic identification was reported.

[25] Because 1972-1973 enrollment figures were not available for Fairfield Borough, 1973-1974 enrollment data from Form OS/CR 101 were used.

[26] Because 1972-1973 enrollment figures were not available for Fairfield Township, 1973-1974 enrollment data from Form OC/CR 101 were used.

[27] There were nine students in Hillside who were suspended for 20 days who are included in the total but not in the racial and ethnic breakdowns because no racial and ethnic data on suspension days were provided.

[28] There were 158 students in Jersey City who were suspended for 1,273 days who are included in the total but not in the racial and ethnic breakdowns because no racial and ethnic data on suspension days were provided. If the 158 students (20 white, 127 black and 11 Spanish-surnamed American) had been counted, the percentages, by race and ethnic group, would have been 1.2, 2.5 and 1.0 respectively.

[29] Because 1972-1973 enrollment figures were not available for Morris, 1973-1974 enrollment data from Form OS/CR 101 were used.

[30] Twelve students, suspended for 24 days, are included in the total for Morris but not in the racial or ethnic breakdowns because no racial or ethnic data on suspension days were reported.

[31] There were 189 students suspended for 1,317 days, who are included in the total for Neptune Township, but for whom no racial or ethnic identification was reported.

[32] There were 794 students, suspended for 1,402 days, who are included in the total for North Bergen, but for whom no racial or ethnic identification was reported.

[33] There were 393 students, suspended for 1,270 days, in Paterson who are included in the total but not in the racial and ethnic breakdowns because no racial and ethnic data on suspension days were provided. If the 393 students (36 white, 328 black and 29 Spanish-surnamed American) had been counted, the percentages, by race and ethnic group, would have been 1.8, 7.4 and 2.4, respectively.

[34] The Roselle District reported that it had no information available, by race or ethnic group, on students suspended or suspension days.

[35] There were nine students, suspended for 45 days, in Trenton who are included in the total but not in the racial and ethnic breakdowns because no racial and ethnic data on suspension days were provided. There were also an additional 745 students who were suspended who are not counted at all, for purposes of our tabulations, because no information on suspension days was reported.

[36] There were 1,763 students, suspended for 6,276 days, who are included in the total for Willingboro, but for whom no racial or ethnic identification was reported.

[37] Because 1972-1973 enrollment figures were not available for Woodbury, 1973-1974 enrollment data from Form OS/CR 101 were used.

[38] There were 5,290 students, suspended for 17,243 days, who are included in the total, but for whom no racial or ethnic identification on students suspended and/or suspension days were reported.

[39] Because no suspension days were reported for the schools in Down Township, the suspensions should not be counted when comparisons of suspensions and suspension days are made.

[40] Because neither Downe Township nor Roselle provided a racial or ethnic breakdown of suspended students the enrollments in these two districts (2,267 white, 1,432 black, 91 Spanish-surnamed American) were not counted when the percentage of students suspended, by race and ethnic group, in the surveyed districts was computed.

[41] There are 229 students in Cincinnati who were suspended for 687 days who are included in the total, but for whom no racial or ethnic identification was reported.

[42] There are 219 students in Mt. Healthy who were suspended for 882 days who are included in the total, but for whom no racial or ethnic identification was reported.

[43] There is a significant discrepancy here between reported suspensions and suspension days because for some of the schools in this district both out-of-school and in-school suspensions (for which there are no suspension days) were recorded. Where it was possible to distinguish, in-school suspensions were not included in the count.

[44] There are 27 students in Youngstown who were suspended for 79 days who are included in the total, but for whom no racial or ethnic identification was reported.

[45] There are a total of 475 students (suspended for 1,648 days) in three districts who are included in the total number of students suspended but for whom no racial or ethnic identification was provided.

[46] Because the Columbus School District reported that no information was available regarding suspensions, the enrollment in Columbus was not included when the percentages were computed.

[47] The suspension figures for individual districts were drawn from the table entitled "Student Suspensions and Expulsions in South Carolina School Districts, 1972-1973" at pp. 14-16 of "Do Unto Others . . . A Report on School Districts' Compliance With South Carolina's 1973 'Student Discipline Law' ", *Your Schools*, Special Report, April 1974, published by the South Carolina Community Relations Program of the American Friends Service Committee. The figures in that table were taken from the School System Summary Reports (Form OS/CR 101, Item VII.B.) submitted to the Office for Civil Rights of the Department of Health, Education and Welfare in the fall of 1973.

[48] Students who were recorded in the table in *Your Schools* as "other" were identified further by checking back to the School System Summary Report (Form OS/CR 101, Item VII. B.).

[49] "Other" includes students identified on Form OS/CR 101 as American Indian or Asian American.

[50] No racial breakdown of the 16 suspensions reported in Anderson County No. 4 was included in Item VII. B. on Form OS/CR 101.

[51] The enrollment figures here do not include two schools which were recorded as being in Richland County No. 1 in the *Directory of Public Elementary and Secondary Schools in Selected Districts*, Fall 1972, p. 1264, but were not in fact part of the public school system. The two schools, John G. Richards for Boys and Willow Lane School for Girls, are correctional institutions.

[52] The figures for the Saluda County School District include enrollment and suspension figures for Hollywood School District No. 4 which was operative during the 1972-1973 school year but is no longer operative.

[53] The total includes 16 students who were suspended in Anderson County No. 4 for whom no racial breakdown was reported.

[54] Because Anderson County No. 4 did not provide a racial breakdown of suspended students, the white enrollment (1,520) in the district was not counted when the percent of white students suspended in the surveyed districts was computed.

[55] Because Anderson County No. 4 did not provide a racial breakdown of suspended students, the black enrollment (737) in the district was not counted when the percent of black students suspended in the surveyed district was computed.

APPENDIX B

Student Suspensions Since the Beginning of the 1972-73 School Year as Reported to Staff of the Children's Defense Fund

As part of an extensive survey of children out of school in 17 school districts throughout the country, the Children's Defense Fund of the Washington Research Project, Inc. attempted to determine the extent to which suspensions were a common method of discipline employed by the schools in those districts. Indeed, the study showed that 4.4 percent of all school-age children surveyed were suspended and 7.9 percent of all secondary school-age children surveyed were suspended. In 11 of the 30 areas surveyed, over 10 percent of the secondary school-age children were suspended. Over 15 percent of the secondary school-age children were suspended in four of the areas. In addition, monitors found that 24 percent of the children suspended at least once were, in fact, suspended three or more times.

This information was gathered using a uniform questionnaire which included questions about the number of children who had been suspended, the frequency and duration of the suspensions, the reasons for the suspensions, and the procedures—regarding notification, hearing, and readmittance—which accompanied the disciplinary actions. Staff monitors visited more than 8,000 households in nine states and the District of Columbia—specifically, parts of Autauga County and Montgomery, Alabama; Denver, Colorado; Hancock County and Macon, Georgia; Davenport, Iowa; Floyd County, Kentucky; Portland, Maine; Cambridge, Holyoke, New Bedford, Somerville and Springfield, Massachusetts; Canton, Mississippi; Columbia and Sumter County, South Carolina; and Washington, D.C.

The areas surveyed—census tracts and housing projects in urban areas, and parts of rural counties—were selected on the basis of specific census measures including racial and ethnic population, income, family size, and number of children under 18 years old and on the basis of information

gathered from community contacts. In an effort to cover more households than the Census Bureau did in the 15 percent sample through which it gathered information on children not enrolled in school, Children's Defense Fund staff members visited at least every fourth household. Interviewing in these areas took place between July 1973 and March 1974.

There are three tables which follow: Table I shows, for each area surveyed, the number and percent of school-age children by age level, suspended from school at least once since the beginning of the 1972-73 school year and the total number of suspensions involved. Since 90 percent of the children suspended at least once were secondary school-age students, Tables II and III describe, for each area surveyed where more than three percent of the 12-17 year-olds were suspended, the number of times these students were suspended (Table II) and the durations of these suspensions (Table III). The raw data from which these tables were prepared is available at the Washington Office of the Children's Defense Fund, 1763 R Street, N.W., Washington, D.C.

TABLE I

School-Age Children (Ages 6 through 17) Suspended at Least Once Since the Beginning of the 1972-1973 School Year *

Areas Surveyed		Number of School Age (6-17) Children Surveyed	Children Ages 6-17 Suspended At Least Once			Children Ages 12-17 Suspended At Least Once		
State	Area		Number Suspended	% of All Children Surveyed 6-17	Number of Suspensions	Number Suspended	% of All Children Surveyed 12-17	Number of Suspensions
Alabama	Autauga County	370	10	2.7%	10	9	4.6%	9
	Montgomery Census Tract 3	187	5	2.7%	11	4	3.9%	9
	Montgomery—Northgate Housing Project	102	3	2.9%	5	3	5.3%	5
Colorado	Denver Census Tract 1.01	101	2	2.0%	6	2	4.1%	6
	Denver Census Tract 8	313	22	7.0%	41	16	10.3%	32
	Denver Census Tract 41.01	153	19	12.4%	50	16	25.0%	45
Georgia	Hancock County	356	0	0%	0	0	0%	0
	Macon Census Tract 127	223	7	3.1%	8	7	6.5%	8
Iowa	Davenport Census Tract 107	119	7	5.9%	10	6	9.8%	8
	Davenport Census Tract 123	122	1	0.8%	2	1	1.6%	2
Kentucky	Floyd County	834	2	0.2%	2	2	0.5%	2
Maine	Portland Census Tract 11	196	13	6.6%	14	13	12.7%	14
	Portland Census Tract 12	64	5	7.8%	5	5	14.7%	5
	Portland Census Tract 19	223	2	0.9%	2	2	1.5%	2
	Portland—Bayside East Housing Project	66	2	3.0%	4	2	8.0%	4
	Portland—Riverton Housing Project	120	8	6.7%	15	6	10.0%	13
Massachusetts	Cambridge Census Tract 3524	162	3	1.9%	6	3	4.3%	6
	Cambridge Census Tract 3527	142	1	0.7%	2	1	1.3%	2
	Holyoke Census Tract 8114	341	18	5.3%	38	14	8.0%	34
	New Bedford Census Tract 6510	272	11	4.0%	21	11	8.3%	21

* Survey data gathered between July 1973 and March 1974.

* Survey data gathered between July 1973 and March 1974.

	New Bedford Census Tract 6526	359	11	3.1%	19	11	6.5%	19
	Somerville Census Tract 3512	378	1	0.3%	2	1	0.5%	2
	Springfield Census Tract 8008	366	19	5.2%	34	17	9.5%	32
	Springfield Census Tract 8018	360	24	6.7%	35	22	13.0%	33
Mississippi	Canton—Joes Prichard Homes Housing Project	161	16	9.9%	26	14	15.4%	22
South Carolina	Columbia Census Tract 5	225	26	11.6%	71	24	20.9%	68
	Columbia Census Tract 22	75	3	4.0%	16	3	7.5%	16
	Sumter County Precinct 2	222	17	7.7%	24	17	14.3%	24
	Sumter County Precincts 1 and 26-B	398	45	11.3%	108	41	17.4%	95
Washington, D.C.	Census Tract 74.04	473	27	5.7%	36	24	10.3%	31
Total		7483	330	4.4%	623	297	7.9%	569

* Survey data gathered between July 1973 and March 1974.

TABLE II

Frequency of Suspensions of Secondary School-Age Children (Ages 12 through 17)
Since the Beginning of the 1972-1973 School Year*
(Only for Areas Where Over 3 Percent of the Children Surveyed Age 12-17 Were Suspended)

Areas Surveyed		Children 12-17 Suspended At Least Once		Frequency of Suspensions for Children 12-17**					
				Children Suspended Once		Children Suspended Twice		Children Suspended 3 or More Times	
State	Area	Number Suspended	% of All Children Surveyed 12-17	Number Suspended	% of All Children Suspended	Number Suspended	% of All Children Suspended	Number Suspended	% of All Children Suspended
Alabama	Autauga County	9	4.6%	9	100%	0	0%	0	0%
	Montgomery Census Tract 3	4	3.9%	2	50%	0	0%	2	50%
	Montgomery-Northgate Housing Project	3	5.3%	2	67%	0	0%	1	33%
Colorado	Denver Census Tract 1.01	2	4.1%	1	50%	0	0%	1	50%
	Denver Census Tract 8	16	10.3%	7	44%	5	31%	4	25%
	Denver Census Tract 41.01	16	25.0%	6	38%	1	6%	9	56%
Georgia	Macon Census Tract 127	7	6.5%	6	86%	1	14%	0	0%
Iowa	Davenport Census Tract 107	6	9.8%	5	83%	0	0%	1	17%
Maine	Portland Census Tract 11	13	12.7%	12	92%	1	8%	0	0%
	Portland Census Tract 12	5	14.7%	5	100%	0	0%	0	0%
	Portland-Bayside East Housing Project	2	8.0%	1	50%	0	0%	1	50%
	Portland-Riverton Housing Project	6	10.0%	3	50%	1	17%	2	33%
Massachusetts	Cambridge Census Tract 3524	3	4.3%	1	33%	1	33%	1	33%
	Holyoke Census Tract 8114	14	8.0%	5	36%	5	36%	4	29%
	New Bedford Census Tract 6510	11	8.3%	7	64%	0	0%	4	36%
	New Bedford Census Tract 6526	11	6.5%	6	55%	2	18%	3	27%
	Springfield Census Tract 8008	17	9.5%	11	65%	3	18%	3	18%
	Springfield Census Tract 8018	22	13.0%	16	73%	0	0%	6	27%
Mississippi	Canton-Joes Prichard Homes Housing Project	14	18.4%	10	71%	2	14%	2	14%

Mississippi	Canton-Joes Prichard Homes Housing Project	14	15.4%	10	71%	2	14%	2	14%
South Carolina	Columbia Census Tract 5	24	20.9%	9	38%	6	25%	9	38%
	Columbia Census Tract 22	3	7.5%	0	0%	1	33%	2	67%
	Sumter County Precinct 2	17	14.3%	11	65%	5	29%	1	6%
	Sumter County Precincts 1 and 26-B	41	17.4%	20	49%	8	20%	13	32%
Washington, D.C.	Census Tract 74.04	24	10.3%	20	83%	2	8%	2	8%
	Total	290	10.5%	175	60%	44	15%	71	24%

* Survey data gathered between July 1973 and March 1974.
** Percentages total 100 percent.

TABLE III

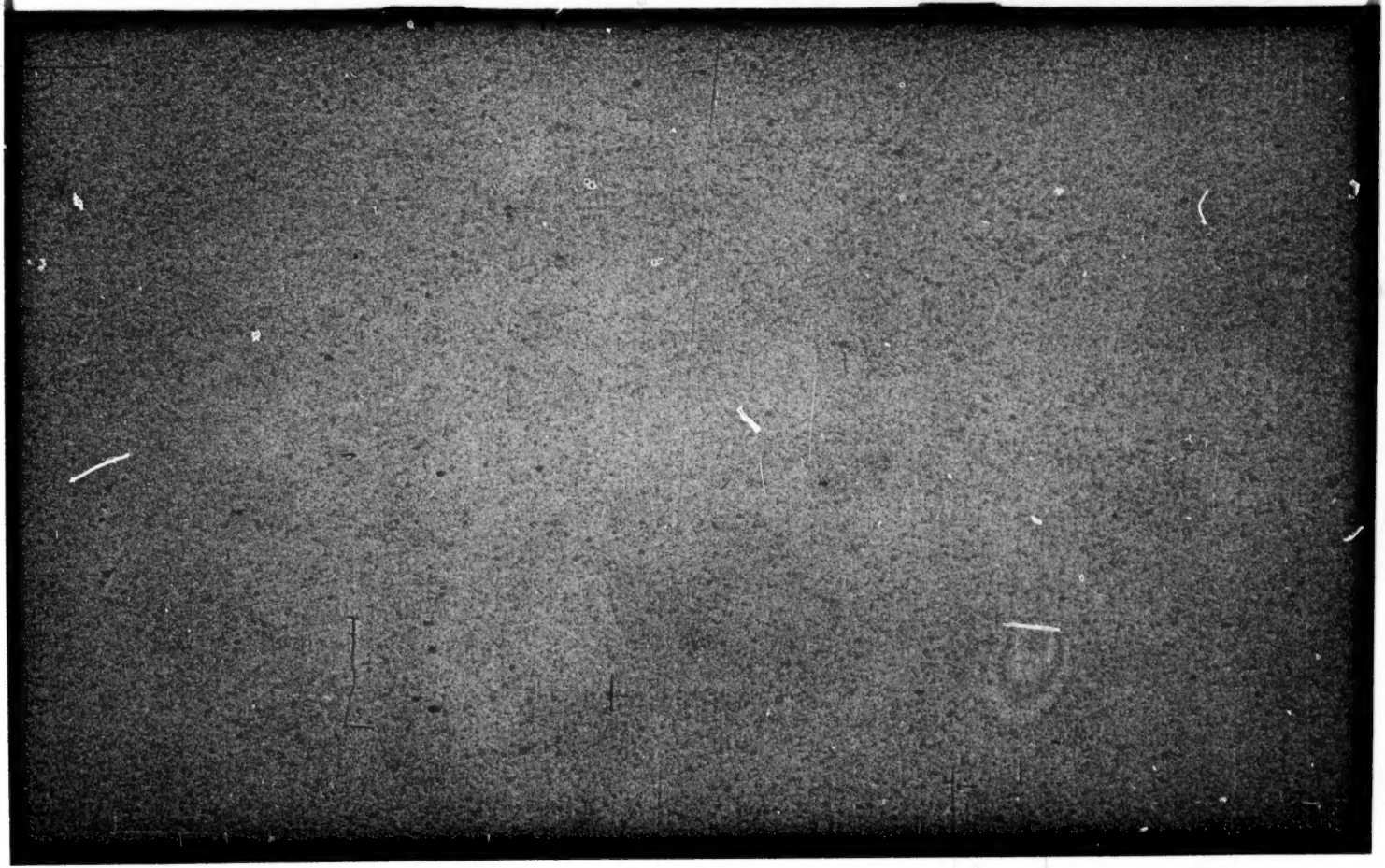
Duration of Suspensions of Secondary School-Age Children (Ages 12 through 17) Since the Beginning of the 1972-1973 School Year * (Only for Areas Where Over 3 Percent of the Children Surveyed Age 12-17 Were Suspended.)

Areas Surveyed		Children 12-17 Suspended At Least Once		Suspensions of Children 12-17		Duration of Suspensions**							
						1-3 Days		4-5 Days		6-10 Days		Over 10 Days	
State	Area	Number Suspended	% of All Children Surveyed 12-17	Number	Number for which Data Collected on Duration	Number of Suspensions	% of All Suspensions	Number of Suspensions	% of All Suspensions	Number of Suspensions	% of All Suspensions	Number of Suspensions	% of All Suspensions
Alabama	Autauga County	9	4.6%	9	9	5	56%	1	11%	3	33%	0	0%
	Montgomery Census Tract 3	4	3.9%	9	9	5	56%	4	44%	0	0%	0	0%
	Montgomery—Northgate Housing Project	3	5.3%	5	4	4	100%	0	0%	0	0%	0	0%
Colorado	Denver Census Tract 1.01	2	4.1%	6	6	5	83%	0	0%	1	17%	0	0%
	Denver Census Tract 8	16	10.3%	32	32	23	72%	6	19%	2	6%	1	3%
	Denver Census Tract 31.01	16	25.0%	45	45	41	91%	4	9%	0	0%	0	0%
Georgia	Macon Census Tract 127	7	6.5%	8	8	5	63%	0	0%	3	38%	0	0%
Iowa	Davenport Census Tract 107	6	9.8%	8	7	5	71%	2	29%	0	0%	0	0%
Maine	Portland Census Tract 11	13	12.7%	14	12	2	17%	6	50%	0	0%	4	33%
	Portland Census Tract 12	5	14.7%	5	5	2	40%	1	20%	2	40%	0	0%
	Portland-Bayside East Housing Project	2	8.0%	4	2	1	50%	1	50%	0	0%	0	0%
	Portland-Riverton Housing Project	6	10.0%	13	13	7	54%	4	31%	1	8%	1	8%
Massachusetts	Cambridge Census Tract 3524	3	4.3%	6	3	2	67%	1	33%	0	0%	0	0%
	Holyoke Census Tract 8114	14	8.0%	34	31	17	55%	9	29%	5	16%	0	0%
	New Bedford Census Tract 6510	11	8.3%	21	18	15	83%	0	0%	3	17%	0	0%
	New Bedford Census Tract 6526	11	6.5%	19	19	19	100%	0	0%	0	0%	0	0%
	Springfield Census Tract 8008	17	9.5%	32	29	15	52%	12	41%	2	7%	0	0%
	Springfield Census Tract 8018	22	13.0%	33	24	14	58%	8	33%	2	8%	0	0%
Mississippi	Canton-Joes Prichard Homes Housing Project	14	15.4%	22	22	10	45%	10	45%	2	9%	0	0%

Mississippi	Canton-Joes Prichard Homes Housing Project	14	15.4%	22	22	10	45%	10	45%	2	9%	0	0%
South Carolina	Columbia Census Tract 5	24	20.9%	68	52	43	83%	6	12%	3	6%	0	0%
	Columbia Census Tract 22	3	7.5%	16	16	9	56%	7	44%	0	0%	0	0%
	Sumter County Precinct 2	17	14.3%	24	24	19	79%	4	17%	1	4%	0	0%
	Sumter County Precincts 1 and 26-B	41	17.4%	95	94	41	44%	29	31%	23	24%	1	1%
Washington, D.C.	Census Tract 74.04	24	10.3%	31	30	21	70%	8	27%	1	3%	0	0%
	Total	290	10.5%	559	514	330	64%	123	24%	54	11%	7	1%

* Survey data gathered between July 1973 and March 1974.

** Percentages total 100 percent.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. [redacted]

NORVAL GOSS, *et al.*,

Appellants,

—v.—

EILEEN LOPEZ, *et al.*,

Appellees.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-896

NORVAL GOSS, *et al.*,

Appellants,

—v.—

EILEEN LOPEZ, *et al.*,

Appellees.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Interest of *Amicus*

The American Civil Liberties Union is a nationwide nonpartisan organization dedicated to preservation of the liberties safeguarded by the Bill of Rights. It files this brief with the consent of the parties.

In recent years, the rights of public school students have been a major focus of the Union's concern.[1] Reflecting that

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[1] For the past several years, the New York Civil Liberties Union has maintained a Student Rights Project, which has sought to establish and protect the rights of students in the New York City public schools. See generally, *NYCLU Student Rights Project: Report on the First Two Years, 1970-1972,* ERIC Document No. ED 073 524.

concern, the Union urged this Court in *Tinker* v. *Des Moines Independent Community School District,* 393 U.S. 503 (1969), to extend to students the free speech protections of the First Amendment. Five years later, we ask this Court to reaffirm its holding in *Tinker* that students are " 'persons' under our Constitution" and insure to them the procedural fairness which is the necessary condition of full enjoyment of substantive rights.

The interest which we advance in this case was perhaps best summarized by Justice Frankfurter in *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 171-72 (1951) (concurring opinion).

> "No better instrument has been derived for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling so important to a popular government that justice has been done."

Statement of the Case

This case involves a constitutional challenge to an Ohio statute and school district regulations which permit public school students to be suspended from school for 10 days without a hearing. Appellees, and the class they represent, are public school students who were suspended pursuant to the authority of the challenged statute and regulations.

A three-judge district court, in an unreported opinion, declared the statute unconstitutional as a violation of the due process clause of the Fourteenth Amendment, and ordered the records of appellees' suspensions expunged.

ARGUMENT

Introduction

It is a fundamental principle of our system of government that, before being deprived of an interest protected by law, a person must be given "an opportunity to be heard respecting the justice of the judgment sought." *Hagar* v. *Reclamation District,* 111 U.S. 701, 708 (1884). The application of that principle to school affairs is important not only because the state is obliged to use fair procedures in dealing with all its citizens, but because schools "are educating the young for citizenship." *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624, 637 (1943). The effect of "sporadic and discretionary enforcement of unreasonable regulations," as one circuit court has observed, "is more likely to breed contempt of the law than respect for and obedience to it." *Jackson* v. *Godwin,* 400 F.2d 529, 535 (5th Cir. 1968). The court was speaking of the effect upon prisoners of arbitrary discipline procedures, but the lesson for this case is apparent. At issue here is whether schools will be permitted "sporadic and discretionary enforcement" of their rules. At stake may be whether students will enter society with respect or contempt for the law.

Students Are Entitled to a Fair Opportunity to Be Heard Before They Can Be Deprived of Their Right to Attend School

"The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protections of libery and property." *Board of Regents* v. *Roth,* 408 U.S. 564, 569 (1972). The

interest which invokes due process protections may derive from the Constitution or state law, may be denominated a right or a privilege, or may be categorized as liberty or property. Whatever its source, whatever its label, if the deprivation is "significant," due process protections attach. *Boddie* v. *Connecticut,* 401 U.S. 371 (1971). Education, by the unanimous agreement of the lower federal courts, is such an interest.[2]

The open question, then, is not whether or not education is an interest whose deprivation must be preceded by due process. Rather, the question is how much due process must accompany how much deprivation. Or, put another way, some due process is commanded by "the nature of the interest at stake," *Board of Regents* v. *Roth, supra,* 408 U.S. at 571; what will vary in the particular situation is "the form of hearing required," *id.* at 570.

Deprivations of education, ranging from suspensions of varying lengths to permanent expulsion, are a routine form of punishment in the schools. Appellant school authorities, however, prefer to speak euphemistically of "acting to preserve order and discipline" (Brief of Appellants, p. 21), hinting that they are engaged not in punishment but in an educational function with which the courts should not become involved. Regardless, discipline—such as suspension from school—is imposed upon students who are accused of failing to obey the rules, thus requiring a finding that a rule has been broken and that the accused student is culpable. That fact-finding process must be procedurally fair if the result—whether called discipline or punishment—is the deprivation of a protected interest.

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[2] See, for example, cases cited in the opinion of the court below. See also, Levine, Divoky and Cary, *The Rights of Students,* Ch. IV (1973).

The "formality and procedural requisites," *Boddie* v. *Connecticut, supra,* 401 U.S. at 378, of the fact-finding process may vary in accordance with the extent of deprivation, but what is essential is that the hearing be held "at a meaningful time and in a meaningful manner." *Armstrong* v. *Manzo,* 380 U.S. 545, 552 (1965). Naturally, the most meaningful time for a hearing which will determine the propriety of punishment is prior to its imposition. That fundamental principle of due process, which this Court has called its "root requirement," is generally applicable "except for extraordinary situations. . . ." *Boddie* v. *Connecticut, supra,* 401 U.S. at 379. With the exception of such extraordinary situations,[3] elemental fairness demands that a hearing precede suspension from school.

Appellants suggest that this analysis is inapplicable because no "grievous loss," *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring), justifying due process protections, was suffered by the suspended students. They point in particular to the fact that the students' academic careers seemingly did not suffer.

Several answers suggest themselves. First, plaintiffs sought and obtained a declaratory judgment against a statute which may be applied to many other students, some of whom will presumably suffer more substantial academic consequences than did appellants. Second, as the court

[3] One district court suggested that such a situation might arise "when the misconduct is so gross and the atmosphere of the school so tense that substantial disruption is highly probable unless instant expulsion is effected." *Fielder* v. *Board of Education,* 346 F. Supp. 722, 729 (D. Neb. 1972). However, even such limited departures "from the accepted standards of due process [are] capable of grave abuses," *In re Oliver,* 333 U.S. 257, 274 (1948), and should be narrowly limited.

below noted, there are other consequences, psychological and social, which a suspended student suffers.[4] Third, the permanent entry on a student's record of a suspension may adversely affect future educational and career opportunities.[5] Finally, to miss ten days of instruction is itself a significant deprivation. Ohio, like most other states, has enacted laws which compel school attendance and punish truancy, presumptive evidence of a judgment that daily classroom instruction is valuable. If a child's daily attendance at school is so important that it will be compelled by law, surely the state will not now be heard to characterize a 10-day prohibition against attendance as of only minor consequence.

The state tries to avoid the harsh realities of a suspension by claiming that it is an aspect of "management and control of the internal affairs of a system it had established" (Brief of Appellants, p. 21). The theme is a familiar one. Institutions have always opposed procedural safeguards on the grounds that they interfere with "internal affairs." Thus, with little variation on the theme, due process claims have been resisted by, among others, those

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[4] As one district judge has observed, "suspension is a particularly humiliating punishment evoking images of the public penitent of medieval Christendom and colonial Massachusetts, the outlaw of the American West and the ostracized citizen of classical Athens. Suspension is an officially sanctioned judgment that a student be for some period removed beyond the pale." *Sullivan* v. *Houston Independent School District*, 333 F. Supp. 1149, 1172, *rev'd on other grounds*, 475 F.2d 1071 (1973), cert. denied —— U.S. —— (1973). Compare Justice Brennan's observation in *Abington School District* v. *Schempp*, 374 U.S. 203, 292 (1963) (concurring): " . . . the excluded pupil loses caste with his fellows, and is liable to be regarded with aversion, and subjected to reproach and insult. . . . "

[5] Compare *Street* v. *New York*, 394 U.S. 576, 579 n. 3 (1969) (collateral consequences of a criminal conviction).

in charge of colleges, *Dixon* v. *Alabama State Board of Education,* 294 F.2d 150 (5th Cir. 1961); welfare benefits, *Goldberg* v. *Kelly,* 397 U.S. 254 (1970); juvenile courts, *In re Gault,* 387 U.S. 1 (1967); parole, *Morrissey* v. *Brewer,* 408 U.S. 471 (1972); public housing, *Escalera* v. *New York Housing Authority,* 425 F.2d 853 (2d Cir. 1970); and prisons, *Sostre* v. *McGinnis,* 442 F.2d 178 (2d Cir. 1971); *Nolan* v. *Scafati,* 430 F.2d 548 (1st Cir. 1970); *Landman* v. *Royster,* 333 F. Supp. 621 (E.D. Va. 1971).

The arguments made on behalf of those institutions warn of similar consequences: cumbersome procedures will drastically impair the efficiency of the institution. But procedural guarantees are now afforded by each of those institutions, and they continue to function—perhaps even better; certainly more fairly.

The schools too will survive if suspension procedures are required to be fair, and not merely efficient. Insofar as the state is genuinely concerned with emergency situations, the due process principles discussed above permit them to remove a student temporarily "if the school is in the throes of a violent upheaval," provided a hearing is held at the "earliest opportunity." *Pervis* v. *La Marque Independent School District,* 466 F.2d 1054, 1058 (5th Cir. 1972). Thus, there is no interference with the state's ability to respond to genuine threats to its educational function.

If the concern of school officials is with the burdens of formal proceedings, they have it in their power, in accordance with the principle that the nature of the hearing will "vary depending upon the circumstances of the particular case," *Dixon* v. *Alabama State Board of Education, supra,* 294 F.2d at 158, to minimize those burdens. If they wish to afford less formal procedures, they can simply curtail

the extent of deprivation suffered by the suspended student. Thus, the period of the suspension could be limited to the duration of the emergency, alternative instruction in some form could be provided,[6] make-up work could be offered and academic penalties and permanent records eliminated.[7] In so doing, the state would be exercising "the least possible power adequate to the end proposed." *Anderson* v. *Dunn,* 6 Wheat (U.S.) 204 (1821).

Another way for the state to reduce the burdens of giving suspended students due process is to substantially limit the number of situations in which suspensions are permitted. When school officials permit suspension for violation of *any* school rule or regulation, as do appellees, it is apparent that students may be suspended for conduct which presents no conceivable threat to educational activities. If procedural requirements for such suspensions proved too burdensome, the state might well explore alternative means of dealing with that conduct and limit the suspension power to emergency situations.[8]

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[6] One federal court has required that "alternative educational opportunities" be provided for suspended students. *Mills* v. *Board of Education of the District of Columbia,* 348 F. Supp. 866 (D. D.C. 1972). See also, New York City Board of Education By-Laws, section 90, subdivision 42 (App., *infra,* p. 19): "Plans shall be made to provide the maximum educational experience for the [suspended] student."

[7] The fact that all suspensions, of whatever duration, become a permanent entry in a student's record, argues for due process guarantees regardless of the length of the suspension. It is the permanent record of the suspension which is perhaps the most disabling of its features. See, *e.g., Vail* v. *Board of Education of Portsmouth School District,* 354 F. Supp. 592, 603 n.4 (D.N.H. 1973).

[8] The by-law of the New York City Board of Education, section 90, subdivision 42 (App., *infra,* p. 19) is illustrative. It calls suspensions an "emergency power," and it allows suspensions only when the student's behavior "prevents the orderly operation

If the state does not choose to forego use of the suspension power in non-emergency situations, it can make no claim that application of due process principles to student suspensions will diminish its power to safeguard its interests. As one commentator has observed,

> "the institutionalized control which schools impose on students often not only fails to serve an educational purpose but in principle does the opposite . . . . In an effective educational setting most of the objectionable behavior of students—their idiosyncratic tendencies, their expressions of opinions on many subjects, the disturbances and distractions caused by their actions, their statements and even their appearance—is actually grist for the educational mill." Ladd, "Allegedly Disruptive Student Behavior and the Legal Authority of School Officials," 19 *J. Pub. L.* 209, 236 (1970).

We think the state has substantially exaggerated the adverse consequences which would flow from due process suspension hearings. It is, in this regard, worth noting that many of the largest school districts in the country, including New York City,[9] San Francisco, Philadelphia and

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of the class or other school activities or presents a clear and present danger of physical injury to school personnel or students." In addition, the suspension must be reviewed every day by the principal and may last only as long as the emergency lasts.

[9] The New York City Board of Education has expressed its commitment to due process in these terms:

> "The constitutional guarantees for students do not stop at the school house door and must be assiduously protected for all who enter. Likewise, a student, like all others in this society, is presumed to be innocent of charges until proved guilty by the evidence produced, surfaced and proved in a fair and impartial hearing, whether administrative or judicial." *Matter of Castelli,* New York City Board of Education (May 29, 1970).

Seattle, have adopted elaborate procedural safeguards in connection with student suspensions. In addition, the Commissioners of Education in New York and New Jersey, the highest education officials in those states, have required due process protections in student suspension hearings.[10]

We might be inclined to agree with Mr. Justice Black, dissenting in *Tinker*, that the federal courts should not be in the business of running the approximately 23,000 school districts throughout the country. That hardly means that everything school officials do in the name of education is beyond judicial scrutiny. *Barnette* v. *West Virginia State Board of Education, supra.* School officials have an important and valuable social role to perform, and surely intend to do nothing but good.[11] Nevertheless, this Court's caution of several years ago is worth recalling: "unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure." *In re Gault*, 387 U.S. 1, 18 (1967).

We are not unmindful of the feeling, shared by many, that our schools are a particularly unlikely place for the imposition of due process guarantees. Parents, students, teachers, and administrators understandably prefer to see themselves as involved in a common effort rather than as adversaries in formal proceedings. But when a student is accused of misconduct, *and* the school officials seek to suspend him, they are adversaries, a fact not changed by foregoing a due process hearing. We emphasize the fact of suspension as critical to the adversary relationship because

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[10] *Matter of Rose*, 10 Ed. Dept. Rep. 4 (1970); *Scher* v. *Board of Education of West Orange*, 1969 School Law Dec. 92.

[11] For a discussion of the doctrine of *in loco parentis*, see Buss, "Procedural Due Process for School Discipline: Probing the Constitutional Outline," 119 *U. Pa. L. Rev.* 545, 559-62 (1971).

there is nothing in the due process clause that prevents school officials from utilizing procedures which deal with misconduct non-punitively.[12] Nothing we have said need limit or formalize those procedures. When, however, the school responds by suspending a student and depriving him of education, it becomes his adversary as surely as if it sought to put him in jail, evict him from public housing, or terminate his welfare benefits.[13] Given this Court's recognition of the critical role of education in our society, its impact on his future life may even be more severe. Such consequences should not be visited without procedural regularity.

In *Tinker,* this Court spoke of the "sort of hazardous freedom . . . that is the basis of our national strength. . . ." An important aspect of that "hazardous freedom" is due process of law. Like free speech, it carries some risks; it

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[12] In New York City, for example, the Circular (App., *infra,* pp. 15-18) governing pupil suspensions suggests the following procedures:

> "All possible alternatives should be explored to help children resolve their adjustment problems before suspension is considered. In pursuit of this objective the school will assume the responsibility to refer pupils and their parents for specialized help. . . ."
>
> "Each principal and teacher has a responsibility to identify pupils in need of help and to enlist the aid of the Board of Education's pupil personnel services as well as the resources available in the community. . . ."
>
> "When a serious problem arises regarding a pupil's behavior, a presuspension conference attended by the appropriate personnel should be called at an early stage in an effort to resolve the problem. It is expected that the parent will be included in efforts to help the pupil in school adjustment."

[13] "When a school board undertakes to expel a public school student, it is undertaking to apply the terrible organized force of the state, just as surely as it is applied by the police, the courts, the prison warden or the militia." *Breen* v. *Kahl,* 296 F. Supp. 702 (W.D. Wis.) *aff'd,* 419 F.2d 1034 (7th Cir. 1969).

also forms part of "the basis of our national strength." It is indisputably a fundamental part of our heritage. As Justice Brandeis observed, "in the development of our liberty, insistence upon procedural regularity has been a large factor." *Burdeau* v. *McDowell,* 256 U.S. 465, 477 (1921) (dissenting).

Regrettably, the perception by most public school students appears to be that "procedural regularity" is a concept that has little reality for them in the day-to-day operation of their schools. A recent study funded by the United States Office of Education, the summary report of which was entitled *Civic Education in a Crisis Age* (1970),[14] concluded that

> ". . . a large majority of the students feel they are regularly subjected to undemocratic decisions. These are seen as unilateral actions by teachers and administrators that deny fundamental rights of persons to equality, dissent, or due process . . .
>
> . . . the great majority of students in secondary schools —'the supposedly silent majority'—is becoming increasingly frustrated and alienated by school. They do not believe that they receive individual justice or enjoy the right to dissent, or share in critical rule-making that affects their lives.
>
> If this is true, then our schools may be turning out millions of students who are not forming a strong and reasoned allegiance to a democratic political system, because they receive no meaningful experience with such a democratically-oriented system in their daily

[14] The study was performed by the Center for Research and Education in American Liberties of Columbia University and Teachers College.

lives in school. For them we should remember, public school is the governmental institution which represents the adult society in its most direct and controlling aspect. If we do not teach the viability of democratic modes of conflict-resolution, and win respect for these as just and effective processes, we will lose more and more potential democrats. If we mean to alter this, we had better look with painful attention at what our children are saying about their perceptions of schools, for it is these perceptions, and not our wishful thinking about what schools should or might be, that are fundamental in the citizenship education now taking place in American secondary education." *Id.* at 1-2.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be affirmed.

Respectfully submitted,

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June 1974

Special Circular No. 103, 1969-1970

BOARD OF EDUCATION OF THE CITY OF NEW YORK
OFFICE OF THE SUPERINTENDENT OF SCHOOLS

June 24, 1970

TO ALL SUPERINTENDENTS, PRINCIPALS, DIRECTORS, HEADS OF BUREAUS AND CHAIRMEN OF LOCAL SCHOOL BOARDS

Ladies and Gentlemen:

PUPIL SUSPENSION

I. Introduction

This circular supersedes Special Circular No. 36, dated November 12, 1969, and all previous circulars and references on the subject of pupil suspension, such as Chapter 8 of the Manual of Attendance Procedures for Principals and Chapter 4 of the Manual of Procedures of the Bureau of Child Guidance. The suspension of a pupil required to attend school is a serious step. The parent has the responsibility for the pupil's regular attendance and orderly behavior while attending school. It is also the responsibility of the parent to maintain the pupil in proper mental and physical condition. The school has the responsibility to accept and instruct all educable pupils, and as such, must take all possible steps in the educative process to prevent the suspension of children. However, it must be recognized that for a variety of reasons some pupils cannot maintain themselves or be maintained in a classroom setting.

II. Prevention Procedures

A. General Considerations

All possible alternatives should be explored to help children resolve their adjustment problems before suspension is considered. In pursuit of this objective the school will assume the responsibility to refer pupils and their parents for specialized help.

If after all available remedial procedures have been applied, a pupils remains disruptive or maladjusted to the extent that he does not profit from instruction or that he prevents other pupils from learning, his educational placement must be re-evaluated. It is recognized that authoritative steps may be necessary, but the approach should be supportive. Each principal and teacher has a responsibility to identify pupils in need of help and to enlist the aid of the Board of Education's pupil personnel services as well as the resources available in the community. In addition, the principal should have available a sufficient record indicating that the pupil was recognized to be in need of extra support and the specific steps taken with parents and staff to help the child. The success or failure of these steps and other pertinent data should be an essential part of the record. However, there may be instances when the severity of a pupil's action will necessitate his suspension even though there be no previous history of disruptive behavior. The suspension procedure must be considered a part of the continuous educational guidance program for the child. Principals', community superintendents' and supervising assistant superintendents' conferences, in relation to suspension, provide an opportunity for parents, teachers, counselors, supervisors, et al., to plan educationally for the benefit of the child.

B. Principal's Conference to Prevent Suspension

1. When a serious problem arises regarding a pupil's behavior, a presuspension conference attended by the appropriate personnel should be called at an early stage in an effort to resolve the problem. It is expected that the parent will be included in efforts to help the pupil in school adjustment.

2. The principal should notify the parent to attend the presuspension conference by a personal letter. (Personal letters are preferable to form letters.) The following letter is suggested, only:

"I am very anxious to meet with you to discuss a serious problem that your child, - (Name) - is having. Would you please come in to see me on - (Date-Time-Place) - so that we can plan ways to solve the problem.

I must stress the urgency of our arriving at a joint solution so that we may avoid suspension or other alternatives."

Yours very truly,

3. Inasmuch as this is a guidance conference held for the purpose of providing an opportunity for parents, teachers, counselors, supervisors, et al., to plan educationally for the benefit of the child, attorneys seeking to represent the parent or child may not participate.

III. Suspension Procedures

A. Principal's Suspension

POOR COPY

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III. Suspension Procedures

A. Principal's Suspension

1. The school principal shall have emergency power to suspend a student from participation in regular school activity when he determines that the overt behavior of that student prevents the orderly operation of the class or other activities or presents a clear and present danger of physical injury to school personnel or students. Such suspension shall be reviewed daily by the principal and shall last only so long as such conditions continue to prevail, but in no case shall exceed five days. No student shall be placed under emergency suspension pursuant to this section twice consecutively or more than twice in one school year. (Note: the above is an excerpt from the Board of Education resolution adopted October 22, 1969.) The clear intention of the suspense procedure is that suspension for a period beyond five days shall have been preceded by a hearing, consequently a principal's suspension may not be followed consecutively by a [illegible] intendent's suspension.

(Continued on Reverse Side)

III. Suspension Procedures - Continued

2. Whenever a pupil under the care of the Bureau of Child Guidance, or another agency or therapist is to be suspended, the principal shall consult with the Bureau of Child Guidance, or agency or therapist prior to the suspension. The final decision remains with the principal.

3. The principal will remove the pupil from his class and must keep him in school under supervision until the close of the school day or the arrival of the person in parental relation to the pupil.

4. The student's parents and community superintendent or the supervising assistant superintendent shall be immediately advised of any emergency suspension by telephone or telegram and the reasons therefor. The parents shall also be informed by certified mail, posted on the day of suspension, that their child has been suspended, the specific reasons for the suspension and that their presence is requested at school for a conference at which time the parent will be permitted the opportunity to discuss the findings leading to the student's removal from class, to question the complainants and to present additional information. The following format should be used: (N.B. A personal letter is suggested rather than a duplicated form.)

"I regret that it has become necessary to suspend your child from school until _____ (Set date not to exceed 5 days), because

(State specific reason with clarity and definiteness)

It is important that you call or write to my office immediately to make an appointment for a mutually convenient time. At that time, you will have the opportunity to examine and discuss the relevant facts with all the parties concerned, so that we may plan together for your child's return to school. If you wish, you may bring two persons. They may be attorneys but may act in the capacity of advisors only. During the period of suspension, your child should be kept at home during school hours."

A copy of the Appeals Procedures must be enclosed with suspension letter to the parents.

5. The conference will be conducted by the principal who will explain the basis of his decision to suspend and allow the parent and student to present their side of the story. According to state law, the person in parental relation may ask questions of complaining witnesses. Parental responsibility should be emphasized. According to the By-laws of the Board of Education, at the conference the parent and the principal may each have the assistance of up to two additional persons unless both parties agree to the presence of more persons.

6. Every effort should be made to secure the parent's attendance at the conference. If the person in parental relation to the child fails to respond or appear, the principal may refer the case to the community superintendent or supervising assistant superintendent who shall take such action as he may determine. A conference cannot take place unless the parent or person in parental relation is present. A guidance approach should be emphasized and maintained throughout the conference which should not be allowed to become an adversary proceeding.

7. A pupil suspended by the principal must be returned to the school by the principal no later than 5 school days after the day of the principal's suspension. A permanent record of the guidance conference held in connection with the suspension will be maintained by the principal.

8. A pupil suspended by the principal under this section may not be suspended more than twice during the school year. These may not be consecutive periods of suspension.

9. At the end of every attendance reporting period of the school year, each principal will send to the Community Superintendent or Supervising Assistant Superintendents:

The name of each pupil suspended
The reason for suspension
Date suspended
Date of principal's hearing
Date of pupil's return to class
Number of school days suspended

10. The suspended pupil will remain on the register of his school and will be marked absent in the roll book during the period of suspension.

B. Community Superintendent's or Supervising Assistant Superintendent's Suspension

1. When a principal believes that a student is so disruptive as to prevent the orderly operation of classes or other school activities, presents a clear and present danger of physical injury to other students or school personnel, or that he will benefit from an alternative educational experience, he shall refer such cases to the community superintendent or supervising assistant superintendent, giving him a brief summary of the student's behavior.

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A copy of the Appeals Procedures must be enclosed with suspension letter to the parents.

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2. If the Community Superintendent/Supervising Assistant Superintendent decides on the basis of the information provided by the principal that suspension procedures are warranted, he shall schedule a hearing on notice of not more than five school days by certified letter to the parents of the student and should hold such hearing on or before the fifth school day of suspension. The notice shall designate the date, time and place of the hearing and shall contain a statement setting forth the parent's right to be represented by counsel and a statement of the specific behavior of the student. Since the decision to suspend is the responsibility of the community superintendent/supervising assistant superintendent, he is required to send the letter of suspension. (The following format is suggested only)

Suggested Format :

Dear

At the request of , Principal of and in view of charged serious misbehavior, your (daughter/son) has been suspended from school. The allegations of misbehavior include the following:

(State specific reasons with clarity and definiteness)

A guidance conference and suspense hearing has been scheduled for:

DATE:
TIME:
PLACE:
PHONE:

It is most important that you attend this conference and that you bring your (daughter/son) with you. In accordance with State Education Law, you may if you wish, have counsel accompany you to this conference. You or counsel have the right to question witnesses.

During this period of suspension, is not to come to school and should be kept home during school hours.

Yours very truly,

John Doe
Community Superintendent or
Supervising Assistant Superintendent

A copy of the Appeals Procedure must be enclosed with suspension letter to the parents.

3. On the day that the principal telephones the district office and the community superintendent/supervising assistant superintendent agrees to schedule a suspense hearing for the pupil, the pupil is to remain in school until the close of the day.

It is the responsibility of the principal to utilize every available means to notify the parent or person in parental relationship on that day that the community superintendent/supervising assistant superintendent is suspending the pupil on the basis of information supplied by the school.

The parent or person in parental relationship may request an extension of time for the date of the hearing. The time extension may be granted by the community superintendent/supervising assistant superintendent. If the time extension is granted, the community superintendent/supervising assistant superintendent should notify the parent by telegram and/or certified mail of the new date, time and place of the hearing and that the child is to be kept out of school during the suspension.

4. The hearing shall be conducted in full accordance with the statutory requirements which provide that no pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil.

The important purpose above and beyond meeting the statutory requirements is to provide an opportunity for parents, teachers, supervisors, et al., to plan educationally for the benefit of the child. The community superintendent or supervising assistant superintendent shall make a written statement of his findings, together with the determination thereof. Such determination may include among other appropriate measures the pupil's reinstatement, transfer to another school, referral for placement in a School for Socially Maladjusted Children, referral to the Bureau of Child Guidance or other suitable professional agency for study and recommendation.

In certain suspension cases where the recommendation is that the pupil be placed in an alternative educational institution, pending such placement, it shall be the responsibility of the Community Superintendent or supervising assistant superintendent to provide for some other means of instruction, such as home instruction.

Suspension should take place only after a finding that the continued attendance of the pupil at his former situation prevents the orderly operation of the classroom or other school activity or presents a clear and present danger of physical injury to students or other school personnel. Every effort should be made to secure the parent's attendance. If the parent fails to appear the community superintendent

A guidance conference and suspense hearing has been scheduled for:

DATE:
TIME:
PLACE:
PHONE:

It is most important that you attend this conference and that you bring your (daughter/son) with you. In accordance with State Education Law, you may if you wish, have counsel accompany you to this conference. You or counsel have the right to question witnesses.

During this period of suspension, _____ is not to come to school and should be kept home during school hours.

Yours very truly,

_____

John Doe
Community Superintendent or
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A copy of the Appeals Procedure must be enclosed with suspension letter to the parents.

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The parent or person in parental relationship may request an extension of time for the date of the hearing. The time extension may be granted by the community superintendent/supervising assistant superintendent. If the time extension is granted, the community superintendent/supervising assistant superintendent should notify the parent by telegram and/or certified mail of the new date, time and place of the hearing and that the child is to be kept out of school during the suspension.

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The important purpose above and beyond meeting the statutory requirements is to provide an opportunity for parents, teachers, supervisors, et al., to plan educationally for the benefit of the child. The community superintendent or supervising assistant superintendent shall make a written statement of his findings, together with the determination thereof. Such determination may include among other appropriate measures the pupil's reinstatement, transfer to another school, referral for placement in a School for Socially Maladjusted Children, referral to the Bureau of Child Guidance or other suitable professional agency for study and recommendation.

In certain suspension cases where the recommendation is that the pupil be placed in an alternative educational institution, pending such placement, it shall be the responsibility of the Community Superintendent or supervising assistant superintendent to provide for some other means of instruction, such as home instruction.

Suspension should take place only after a finding that the continued attendance of the pupil at his former situation prevents the orderly operation of the classroom or other school activity or presents a clear and present danger of physical injury to students or other school personnel. Every effort should be made to secure the parent's attendance. If the parent fails to appear the community superintendent or the supervising assistant superintendent shall reschedule the hearing, but may suspend a pupil pending the rescheduled hearing where he finds that the continued attendance of the pupil at his former educational situation prevents the orderly operation of the classroom or other school activity or presents a clear and present danger of physical injury to students or to other school personnel.

5. The suspended pupil will remain on the register of his school and will be marked absent in the roll book during the period of suspension. Appropriate notation of the suspension should also be recorded on the cumulative record.

(Continued on Reverse Side)

6. A suspended pupil who moves to another school district within the City shall be placed immediately upon the register of the school serving the new residence and suspension shall be continued. All pertinent information will be forwarded to the community superintendent or supervising assistant superintendent of the new district, who will make final disposition of the case.

7. At the end of each attendance reporting period, the community superintendent or supervising assistant superintendent will forward to the Superintendent of Schools a report on pupil suspensions, including the following:

a) A summary of the community superintendent's or supervising assistant superintendent's suspensions and descriptive data regarding disposition and status as well as time elapsed since the date of suspension.

b) The number of principal suspensions and the duration of each suspension.

IV. Regulations Governing Appeals

If, after meeting with the school principal, the parent believes that the suspension was not justified, he may, for the elementary and junior high schools, appeal in the first instance to the community superintendent and in the second instance from the community superintendent to the community school board and then to the Central Board of Education to review the suspension decision.

Appeals affecting high school and special school students should be appealed in the first instance to the supervising assistant suaperintendent and in the second instance to the Central Board of Education.

After a decision on an appeal is reached, the parent shall be informed of the decision in writing and the reasons therefor. In any case, where the supervising assistant superintendent, the community superintendent, the community school board or the Central Board of Education find that the action of the student did not justify his suspension from classes, the student shall be exonerated and any record of disciplinary proceedings against him shall be expunged from his record.

Very truly yours,

IRVING ANKER
Superintendent of Schools (Acting)

BY-LAWS OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, SECTION 90, SUBDIVISION 42—SUSPENSIONS

42. The following procedures shall exclusively set forth the emergency suspension powers of a school principal pursuant to paragraphs (b) and (d) of subdivision 6 of section 3214 of the Education Law.

1. The school principal shall have emergency power to suspend a student from participation in regular school activity when he determines that the overt behavior of that student prevents the orderly operation of the class or other school activities or presents a clear and present danger of physical injury to school personnel or students. Such suspension shall be reviewed daily by the principal and shall last only so long as the conditions continue to prevail, but in no case shall exceed five days. No student shall be placed under emergency suspension pursuant to this section twice consecutively or more than twice in one school year.

2. The student's parents and the supervising assistant superintendent shall be immediately advised of any emergency suspensions by telephone or telegram and the reasons therefor. The parents shall also be informed by certified mail, posted on the day of suspension, that their child has been suspended, the reasons for the suspension and that their presence is requested at school for a conference, at which time the parent will be permitted the opportunity to discuss the findings leading to the student's removal from class, questioning the complaints and presenting additional information. At the conference the parent and the principal may each have the assistance of up to two other people unless both parties agree to additional persons.

Plans shall be made to provide the maximum educational experience for the student. A copy of the certified letter to the parent shall be forwarded also to the supervising assistant superintendent. When suspended from the classroom, the student shall remain under the supervision of the principal until the end of the school day or until such time as the parent comes to claim his child.

3. If, after meeting with the school principal, the parent believes that the suspension was not justified, he may first appeal to the supervisiing assistant superintendent and then to the community school board or to the Central Board of Education to review the suspension decision. The parent shall have the right to present evidence through either oral or written procedures.

4. After a decision on an appeal is reached, the parent shall be informed of the decision in writing and the reasons therefor. In any case where the supervising assistant superintendent, a community school board or the Central Board of Education finds that the action of the student did not justify his suspension from classes, the student shall be exonerated and any record of disciplinary proceedings against him shall be expunged from his record.

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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-898

NORVAL GOSS, ET AL.,
Appellants,

v.

EILEEN LOPEZ, ET AL.,
Appellees.

On Appeal from a Three-Judge United States District Court for the Southern District of Ohio, Eastern Division

REPLY BRIEF FOR APPELLANTS

INTRODUCTION

Appellees and their friends through the argument they present, urge this Court to conclude that the due process clause of the Fourteenth Amendment applies to students in Ohio public schools who are subject to academic discipline in the form of short term suspensions.

The arguments asserted proceed from a foundation which treats and equates education as representing nothing more than an institutionalized process. Presence in a particular school building or in a particular school system assumes an importance equal to or greater than, the actual pursuit of knowledge. Presence in a particular school system or school building represents education.

This preoccupation with education viewed as a caretaker function demonstrates itself most clearly in appellees' assertion that students who have been suspended have a greater chance of contact with the police. [Brief of Appellees, p. 36.]

While historical and judicial support for this argument appears lacking, the argument is important to appellees' conclusion that the issue to be decided by this Court in the present case is no different than the issues which confronted the Court in the welfare, commercial and even criminal law areas.

The present case does not present a situation warranting the adoption of the narrow theory that being part of an institutionalized process means education.[1] Appellees were never deprived of that free choice right to train their minds. Further, they participated in the process and even received the product of the process, a diploma. What this case does involve is the right of a state legislative body to decide, in establishing a system of public education, how the system will operate, the power that will be given principals to manage and control the daily operation of the system, including even the restrictions that will be placed on that power, and the relationship that will exist between those who operate the system and those who are participants. In exercising such legislative power and discretion, the state legislature of Ohio did not act in a manner such as deprived appellees of a right of liberty or property protected by the due process clause when they restricted the power of a principal to summarily suspend to a period of ten calendar days.

1. "In modern society where a large number of our values are being re-examined there is no need to conclude that 'education' the pursuit of knowledge, a personal activity means nothing more than being part of an institutionalized process. The pursuit of knowledge should remain a broad concept." Ivan Illich, *Deschooling Society*, Harper & Row (1971) 38-39, 73-104.

ARGUMENT

Several points need to be made with regard to the broad sweeping arguments relating to the application of the due process clause asserted by appellees and their friends. These points or principles relate chiefly to the framework within which this entire question of academic discipline and the due process clause, separated from the involvement of any First Amendment issue, race issue, or unequal application issue must be examined. Serious consideration of these principles, divorced from a parade of fears supports a conclusion that a legislature that passes a statute similar to Section 3313.66 of the Ohio Revised Code does not violate specifically identifiable constitutional interests protected by the due process clause.

THE COMMON SCHOOL SYSTEM HISTORICALLY ESTABLISHED TO PROTECT THE STATE FROM AN UNEDUCATED CITIZENRY CANNOT BE EQUATED WITH MORE RECENT AREAS OF LEGISLATIVE CONCERN.

1. The actual historical framework within which systems of local education arise is overlooked by appellees and their friends. Particularly overlooked is the fact that a system of public education is established by the state for the purpose of furthering the interest of the state, namely, the protection and improvement of the state as a political entity. The primary aim is not the specific benefit of any one individual. *Bissell v. Davison,* 32 A. 348, 349 (1849); *Fogg v. Board of Education,* 82 A. 173, 174-175 (1912); *State, ex rel., Lien v. School Dist. No. 73 of Stillwater County,* 76 P.2d 330, 331 (1938); *Opinion of the Justices,* 233 A.2d 832, 837 (1967); and Arval Morris, *The Constitution and American Education,* West Publishing Company (1974) 113, 204-205.

2. If one gives proper recognition to the historical

premise that systems of local education were created and designed to perform a societal function as opposed to a purely personal function; then it is clear that this Court in a case involving purely the internal operation of the system is not faced with the type of situation presented in *Goldberg v. Kelly,* 397 U.S. 254, 25 L.Ed.2d 287 (1970); *Fuentes v. Shevin,* 407 U.S. 67, 32 L.Ed.2d 556 (1972); or *Sniadach v. Family Finance Corp.*, 395 U.S. 377, 23 L.Ed.2d 349 (1969). Justice Powell's analysis of *Goldberg v. Kelly, supra,* contained in his concurring opinion in *Mitchell v. W. T. Grant Co.*, ___ U.S. ___, 40 L.Ed.2d 406, 424 (1974), wherein that case was placed in the category of cases involving a question of "brutal need" certainly distinguishes the case from the present situation.[2] Certainly this Court is not faced with a situation involving such a threat to life as to present a case of "brutal need." Further, this Court's analysis of welfare benefits as contrasted with other government actions cannot be overlooked, *Goldberg v. Kelly,* 397 U.S. at 262-264. *Fuentes v. Shevin, supra,* and *Sniadach v. Family Finance Corp., supra,* involve questions of pure personal property and relations between consumers and vendors or the assignees of vendors and bear no similarity to the instant situation. In fact, *Sniadach v. Family Finance Corp., supra,* might well be placed in the category of cases such as *Goldberg, supra,* wherein questions of brutal need might arise. Concurring opinion of Justice Powell, *Mitchell v. W. T. Grant Co.,* 40 L.Ed.2d at 425-426, footnote three. The field of commerce and the attendant problems surrounding personal property, contract and the potential affects on life, bear no relationship to the internal operation and management of a state created system of common schools created to protect the state from an uneducated citizenry. The history sur-

2. Equally worthy of note is the analysis found in Justice Powell's concurring opinion in *Arnett v. Kennedy,* ___ U.S. ___, 40 L.Ed.2d 15. 41 (1974).

rounding the evolution and growth of systems of common education, such as the system established in Ohio and the well-established premise that local authorities do possess judgmental decision making power where the question concerns the control and operation of such systems, illustrates the dissimilarity.

3. Unless the historical concept that common school systems are established by the state for essentially its own protection is abandoned, and unless continued recognition of the policy making power possessed by states where the question involves both the operation and control of local systems is to cease, it cannot be said that the state's interest in the day-to-day dispatch of affairs within that system is one less significant than a government employer's interest. A requirement of prior adversary hearings fastened to a principal's duties in conducting the daily affairs within a school system certainly places the principal in an awkward position with respect to the students he must both control and direct and certainly has no less consequence than those present in the relationship existing between federal employer and employee. *Arnett v. Kennedy*, ___ U.S. ___, 40 L.Ed.2d 15, 41 (1974) concurring opinion of Justice Powell.

4. The pattern of legislation in Ohio under which the state established its system of public education is typical of legislation creating a system of public common education and that pattern of legislation places wide discretion in boards of education in the government of their employees and students who participate in the system. Section 3313.20, Ohio Revised Code, and Section 3313.47, Ohio Revised Code. *Greco v. Roper*, 145 Ohio St. 243, 61 N.E.2d 307 (1945); *Holroyd v. Eibling*, 90 Ohio Law Abs. 78, 116 Ohio App. 440 (1961). Section 3313.66, Ohio Revised Code, reflects a policy decision on the part of the Ohio Legislature to the effect that the broad discretion given to principals and administrators is to be lim-

ited, in that a suspension given to a student cannot last longer than ten days.

THE QUESTION OF THE LENGTH OF A SUSPENSION AND PROCEDURES NECESSARY TO IMPLEMENT THAT SUSPENSION PRESENTS A POLICY QUESTION TO BE DETERMINED BY LEGISLATIVE JUDGMENT.

5. In terms of the construction and application of the due process clause, what is really involved in this case is a question of conduct regulating policy; the power of teachers and principals to regulate and control conduct in the classroom and in the school of a state created system of common schools. Viewed in that sense, questions of conduct regulation involve issues formerly considered under substantive due process, as opposed to pure procedural due process. Leonard G. Ratner, "The Function of the Due Process Clause," 116 U. Pa. L.Rev. 1048, 1050-1053 (1968). Absent questions relating to the First Amendment, discrimination, or decisions based on race, religion or sex, no provision of the Constitution proscribes the state's authority to regulate conduct within its own facility. Ratner, *supra,* 116 U. Pa. L.Rev. 1048, 1060-1063 (1968). The area of the establishment of a common school system, including making provision for the control of teachers and students, in the absence of the implication of a fundamental specifically identified interest, should remain viewed as one involving considerations over which this Court will not substitute its wisdom for that of the legislative body. *Linwood v. Board of Education of Peoria,* 463 F.2d 763, 768-769, *cert. denied,* 409 U.S. 1027 (1972); *Ferguson v. Skrupa,* 372 U.S. 726, 731, 10 L.Ed.2d 93, 97-98 (1963); *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.,* ___ U.S. ___, 38 L.Ed.2d 379, 386-387 (1963); *Healey v. James,* 408 U.S. 169, 203, 33 L.Ed.2d 266, 292 (1972),

concurring opinion of Justice Rehnquist; Ratner, *supra*, 116 U. Pa. L.Rev. 1048, 1080 (1968) and Note, "The Conclusive Presumption Doctrine: Equal Process or Due Protection," 72 Michigan L.Rev. 800 (1974). Particularly is this analysis compelling in the area of suspensions. The issue surrounding the establishment of a suspension procedure including how long a suspension may be issued without a hearing is a legislative question.

6. Unless the principle is to be adopted that the due process clause applies to every conceivable situation, a position specifically disavowed by this Court in *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895, 6 L.Ed.2d 1230 (1961), then it would appear, at least in the area of suspensions in common school systems, that this Court is faced with an area of concern open to the exercise of legislative judgment. That being the case, the question of how long a suspension may be handed out without prior hearing poses a question of substantive rather than procedural due process. *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 38 L.Ed.2d at 386-387; *Ferguson v. Skrupa, supra; Linwood v. Board of Education of Peoria*, 463 F.2d at 768-769; *Arnett v. Kennedy*, ___ U.S. ___, 40 L.Ed.2d 15, 32-33 (1974); and Note, "The Conclusive Presumption Doctrine: Equal Process or Due Protection," 72 Michigan L.Rev. 800, 816-836 (1974). Certainly, the state in the creation and operation of its own system of common schools can decide within the framework of its legislative power whether or not a principal should have to afford a prior hearing before suspending a student for ten calendar days. If a state may validly decide who shall engage in the business of debt adjusting, then it certainly possesses the legislative power to decide in the exercise of its wisdom both what power a principal shall have to manage and control a school and the manner in which that power

should be restricted.[3] *Ferguson v. Skrupa*, 372 U.S. at 731, and *St. Ann v. Palisi*, 495 F.2d 423, 429-434 (1974) [dissenting opinion of Judge Roney].

7. Such cases as *Cleveland Board of Education v. LaFleur*, ___ U.S. ___, 39 L.Ed.2d 52 69-70 (1974) concurring opinion of Justice Powell; *Karr v. Schmidt*, 401 U.S. 1201, 27 L.Ed.2d 797 (1971), dissenting opinion of Justice Black; *Tinker v. Des Moines Community School District*, 393 U.S. 503, 526, 21 L.Ed.2d 731, 749 (1968), dissenting opinion of Justice Harlan and concurring opinion of Justice Stuart; *Epperson v. Arkansas*, 393 U.S. 97, 21 L.Ed.2d 228 (1968); *Waugh v. Board of Trustees of the University of Mississippi*, 237 U.S. 589, 59 L.Ed. 1131, 1136 (1915); *Wright v. Council of City of Emporia*, 407 U.S. 451, 478, 33 L.Ed.2d 51, 70 (1972) dissenting opinion of Chief Justice Burger;[4] and *Milliken v. Bradley*, ___ U.S. ___, 41 L.Ed.2d 1069 (1954)[5] and the expres-

3. The comment of Justice Holmes in *Truax v. Corrigan*, 257 U.S. 312, 344, 66 L.Ed. 254, 268 (1921) is worthy of observation in this case: "I must add one general consideration. There is nothing that I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several states, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect."

4. The pronouncements to be found in these decisions represent a clear pattern of recognition of the fact that in the area of local common schools states do possess discretionary authority to run their local schools as their judgment dictates. The weight to be given to the recognition of such authority is similar to the weight that was given the long recognition of policy in *Galvan v. Press*, 347 U.S. 522, 530-531, 98 L.Ed. 911, 921-922 (1953). Section 3313.66 of the Ohio Revised Code does not amount to an abuse of that discretionary authority.

5. In *Milliken v. Bradley*, ___ U.S. ___, 41 L.Ed.2d 1069, 1089, that recognition is stated clearly in the following manner: "No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process. * * * Thus, in *San Antonio School District v. Rodriguez*, 411 U.S. 1, 50, 36 L.Ed.2d 16, 93 S.Ct. 1278, we observed that local control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages experimentation, innovation and a healthy competition for educational excellence!" Academic discipline is very much a part of that process. Involved in the structuring of school programs and relationships is the question of academic discipline and the form it will take. Academic discipline and the educational process are not mutually exclusive. *Laucher v. Simpson*, 28 Ohio App.2d 195, 198, 276 N.E.2d 261 (1971).

sions contained therein recognize the broad authority of state legislatures in the area of operating and controlling local schools according to their best judgments and really represent pronouncements similar to that contained in *Ferguson v. Skrupa*, 372 U.S. 726, 10 L.Ed.2d 93 (1963) all to the effect that with respect to common schools established by the state, absent infringement of a specifically identified constitutional interest, there is an area within which legislative judgment is free to operate in providing conduct regulating legislation, an area into which this Court will not invade and substitute its judgment. Section 3313.66 of the Ohio Revised Code is a statute which falls within the legislative area where the state is free to decide for itself not only what legislation is needed to control the internal affairs of its schools, but the kind of restrictions that should be placed on that authority. The District Court in this case and other Federal Courts past and present in addressing the question of suspension [Brief of Children's Defense Fund, pp. 26-27] have engaged in a substantive due process substitution of their judgment for that of the legislature, the body charged both with providing for the internal management of local schools and with establishing and defining the authority of local teachers and administrators. This Court has rejected such an approach in reviewing legislation to determine if it conforms with the Constitution. *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 38 L.Ed.2d at 386-389.

THE PASSAGE OF A COMPULSORY EDUCATION LAW DOES NOT SERVE TO CREATE A PROPERTY RIGHT FOR THOSE WHO ATTEND THE STATE'S SYSTEM OF COMMON SCHOOLS.

8. The state has not created a right of property within the meaning of *Board of Regents v. Roth*, 408 U.S. 564, 33 L.Ed.2d 548 (1972) when it established a common school system for its protection. Examination of the sys-

tem of common schools established in Ohio does not disclose that the legislature intended to confer upon students a status such as would make the occupation of a school building a protected property right. Chapter 3321 of the Revised Code projects the public policy of the state common schools. *State v. Gans*, 168 Ohio St. 174, 5 Ohio Ops.2d 472, 476 (1958). Article VI, §2 of the Ohio Constitution directs the legislature to use tax funds for the provision of a system of common schools. Article VI, §3 of the Ohio Constitution directs the legislature to provide for the organization, administration and control of the common school system called for under §2. The legislature in §3313.47 of the Ohio Revised Code placed the management and control of the common schools thus created in the respective local school boards. The legislature also in §3313.20 gave each board of education general power to prescribe rules and regulations "for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises." Consideration of these constitutional provisions and statutes passed in furtherance of a common school system does not support a conclusion that the legislature intended to confer upon students a status akin to a property right. Neither §3313.20 of the Revised Code which confers a broad grant of power nor §3313.66 of the Revised Code which places a restriction on the authority of the principal requires that a student be granted a hearing prior to the administration of academic discipline. The claimed existence of a property right should be compared with the analysis of a property right in *Jafree v. Scott*, 372 F.Supp. 264, 270-272 (1974); *Adams v. Walker*, 492 F.2d 1003, 1006 (1974) and *Shirck v. Thomas*, 486 F.2d 691, 692 (1973). A statutory entitlement is not to be found with the statutory

scheme enacted by Ohio in formulating its common school system.[6]

The object of Ohio's compulsory education law may be expressed in terms of legislation whose objective is the enforcement of the parents' natural obligation to provide an education for their young. In other words, the compulsory education law places a duty on the parents to choose either public or private schools. Thus, in enforcing this natural obligation the state protects itself from a uninformed citizenry. *People v. Levisen*, 90 N.E.2d 213, 215 (1950) and *State, ex rel., Chafin v. Glick*, 172 Ohio St. 249 (1961). In §§3313.67 and 3313.671 of the Ohio Revised Code certain vaccinations and immunizations are made compulsory; however, one would not seriously argue that they confer a property right. Further, a similar compulsory attendance and participation aspect is present in military service under the draft; however, no one would argue that compulsory attendance or participation resulting from the draft creates a property right.

A property interest arising by virtue of state law was not involved in this case. *Perry v. Sindermann*, 408 U.S. 593, 602, 33 L.Ed.2d 570, 580 (1972) footnote seven.

THE RELATIONSHIP INVOLVED, OBJECTIVES TO BE ATTAINED AND FORCES AT WORK IN A COMMON SCHOOL SYSTEM ARE DISSIMILAR FROM ANY TYPICAL AREA OF ADULT INVOLVEMENT.

9. Appellees and their friends evince an almost wooden preoccupation with the need for a hearing within the framework of academic discipline. That preoccupation does not permit them to recognize the relationship

6. Compare this case with the careful analysis of "property" and the evolution of "property rights" to be found in *Cannady v. Person County Board of Education*, 375 F.Supp. 689, 700-701 (1974).

involved and at work in administering a common school system. Their view of the area can easily be characterized as one which attempts to reduce all situations to one where the prime objectives are akin to those at work in a determination of criminal responsibility. [Brief of American Civil Liberties Union, p. 6, footnote 5.] Appellants do not have to resort to the doctrine of *in loco parentis* to state with certainty that the parties involved, the relationship that exists and must exist between those parties, and the objectives to be attained in the operation and administration of a common school system cannot be resolved into a convenient question of accusation and the assessment of culpability.

10. Appellees and their friends in discussing what could be categorized as a chamber of horrors of problems experienced by children, completely miss the point and the frame of reference within which conduct within the common school classroom and school buildings must be viewed. Lost in such an approach is the relationship that exists between principal, teacher and student, with the student being a person possessed of varying degrees of maturity or no maturity at all. The problems to be confronted in a common school classroom or school building do not reduce themselves to a simple question of creating a fault-finding process. "Discipline in a school classroom or building is not very different from discipline at home." Dr. James Dobson, *Dare to Discipline*, Tyndale House Publishers (1972) 27. The chief issues that must be faced, in a school setting today, in order to promote an atmosphere in which education (i.e., the choice to pursue and acquire knowledge) can be fostered, relate to creating between principal, teacher and student respect, a sense of responsibility, an awareness of the boundaries of acceptable behavior and an element of self discipline.

Engrafting upon the present system what is tantamount to an adversary relationship in which the authority of the teacher or principal is made subject to a fault-finding process will not promote these objectives. Academic discipline in the present system of common schools represents an attempt to reflect and foster these principles. It is not and should not be associated with a process which is very much akin to the fault-finding process at work in criminal law. Punishment or discipline in the school setting is not imposed for punishment's sake and should not be viewed in that light. Appellees and their friends do not and cannot point to any system wherein education, as defined by appellants and this Court, has been fostered by turning academic discipline into an adversary relationship. Contrary to appellees and their friends' assertions relating to the improper use of discipline, the authorities are not in agreement concerning the use of discipline within today's common school system. As pointed out by Dr. Dobson:

> "The degree of student control exercised by school authorities has never been so minimal as it is today in America. Some concerned parents are refusing to send their children to school until safety can be guaranteed. We simply must restore a greater semblance of order in our junior and senior high schools, yet the trend at this time is toward more and more student autonomy. Educational discipline is still on the wane, as is reflected in the elimination of traditional rules and regulations." Dobson, *Dare to Discipline, supra,* 93.

Questions of child rearing both at home and within the schoolhouse which must include and involve academic discipline cannot be equated with problems surrounding the grant of welfare benefits, the grant of a

drivers license, the seizure of admitted personal property or with the myriad of constitutional protections surrounding criminal law. Such an approach treats a very complex area of personal relationships in a far too simplistic manner. What appellees and their friends ultimately seek is full autonomy for children of primary and secondary school age. Such an approach involves critical questions of policy including questions relating to whether or not the system of common schools should be retained. Academic discipline does not involve a denial of education as appellants have defined the term, if this Court still adheres to the concept expressed in *Epperson v. Arkansas,* 393 U.S. 97, 21 L.Ed.2d 228, 234 (1968) to the effect:

> "By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." [7]

The conclusion does follow that §3313.66 of the Ohio Revised Code does not directly and sharply implicate basic constitutional values, and the question of the kind of academic discipline that will prevail in today's common school system is a question to be resolved by parents, teachers, administrators and the various legislative bodies exercising their own best judgment. Parents are beginning to respond to that question of policy regarding the kind of classroom structure and academic discipline they want. Diane Divoky, *Opting For An Old-Fangled Alternative,* Learning Magazine (February, 1974) 13.[8]

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7. The comments of Justice Black in *Karr v. Schmidt,* 401 U.S. 1201, 1202, 27 L.Ed.2d 797 (1971) relating to the power of the states absent the involvement of a specifically identified constitutional interest buttress this recognition of local decision making power.

11. The concept of education which is portrayed in the briefs submitted by appellees and their friends is one which reduces a very complex pursuit to a question of class attendance and booklearning. Education, the pursuit of knowledge and corresponding personality growth, involves much more. Particularly in this conclusion true in the primary and secondary school area. Concepts of citizenship, respect for authority, self discipline and responsibility are very much a part of the fabric of the pursuit of knowledge. It is a mistake to equate academic discipline with the assessment of criminal responsibility. It is an even greater mistake to insist, in substance, that a teacher or prncipal should be more concerned with the assessment of cupability than with the personality entrusted to his care. [Brief of the Children's Defense Fund, p. 11.]

CONCLUSION

In the present case, where the question presented is a narrow one, it does no violence to the distinction between the concepts of equal protection of the law and due process to give recognition to this Court's rationale in *San Antonio School District v. Rodriguez,* 411 U.S. 1, 29, 35-37; 36 L.Ed.2d 16 (1973). Certainly this Court in *Roe v. Wade,* 410 U.S. 113, 35 L.Ed.2d 147 (1973) did not maintain a rigid demarcation between equal protection and due process. *Roe v. Wade,* 410 U.S. at 173, dissenting opinion of Justice Rehnquist. The comprehensive inquiry of this Court in *Rodriguez,* 411 U.S. at 29-37, relating to education is at least helpful in the search for an interest protected by the Constitution. *Rodriguez,* 411 U.S. at 62, concurring opinion of Justice Stuart. That

8. Exploration of the social relationship that should exist between principal, teacher and student is also taking place. The establishment of an adversary relationship is not an alternative being considered. Alfred Alschuler and John V. Shea, *The Discipline Game: Playing Without Losers,* Learning Magazine (August/September 1974) 80, 86.

rationale demonstrates that the statute under review, §3313.66 of the Ohio Revised Code, impinges upon no right of liberty or property secured by the Constitution.

The record of this cause does not demonstrate that appellees' broad liberty recognized in *Pierce v. Society of Sisters of Holy Names,* 268 U.S. 510, 69 L.Ed. 1070 (1925) and *Meyer v. Nebraska,* 262 U.S. 390, 67 L.Ed. 1042 (1923) was ever sharply implicated. The record of this cause does illustrate the problems that arise surrounding the internal operation and management of a system of common schools, including the judgmental decisions that must be made. It was within the discretionary power possessed by the Ohio legislature, acting to restrict the power previously granted to principals, to equate a suspension of ten days with other forms of minor academic discipline not requiring a hearing, while at the same time requiring a hearing where the academic discipline imposed is expulsion. *Linwood v. Board of Education of Peoria,* 463 F.2d at 769 (1972).

Appellees did not prove that §3313.66 of the Ohio Revised Code, the conduct of the involved principals or the rules and regulations of any particular school were motivated by other than legitimate school concerns. *Tinker v. Des Moines Community School District,* 393 U.S. 503, 526; 21 L.Ed.2d 731, 749 (1968) dissenting opinion of Justice Harlan.

The judgment of the District Court should be reversed.

Respectfully submitted,

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Attorney for Appellants.

(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

GOSS ET AL. *v.* LOPEZ ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

No. 73–898. Argued October 16, 1974—Decided January 22, 1975

Appellee Ohio public high school students, who had been suspended from school for misconduct for up to 10 days without a hearing, brought a class action against appellant school officials seeking a declaration that the Ohio statute permitting such suspensions was unconstitutional and an order enjoining the officials to remove the references to the suspensions from the students' records. A three-judge District Court declared that appellees were denied due process of law in violation of the Fourteenth Amendment because they were "suspended without hearing prior to suspension or within a reasonable time thereafter," and that the statute and implementing regulations were unconstitutional and granted the requested injunction. *Held:*

1. Students facing temporary suspension from a public school have property and liberty interests that qualify for protection under the Due Process Clause of the Fourteenth Amendment. Pp. 6–11.

(a) Having chosen to extend the right to an education to people of appellees' class generally, Ohio may not withdraw that right on grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct has occurred, and must recognize a student's legitimate entitlement to a public education as a property interest that is protected by the Due Process Clause, and that may not be taken away for misconduct without observing minimum procedures required by that Clause. Pp. 7–8.

(b) Since misconduct charges if sustained and recorded could seriously damage the students' reputation as well as interfere with later educational and employment opportunities, the State's claimed right to determine unilaterally and without process

whether that misconduct has occurred immediately collides with the Due Process Clause's prohibition against arbitrary deprivation of liberty. P. 9.

(c) A 10-day suspension from school is not *de minimis* and may not be imposed in complete disregard of the Due Process Clause. Neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary. Pp. 10–11.

2. Due process requires, in connection with a suspension of up to 10 days, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his version. Generally, notice and hearing should precede the student's removal from school, since the hearing may almost immediately follow the misconduct, but if prior notice and hearing are not feasible, as where the student's presence endangers persons or property or threatens disruption of the academic process, thus justifying immediate removal from school, the necessary notice and hearing should follow as soon as practicable. Pp. 12–18.

— F. Supp. —, affirmed.

WHITE, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, STEWART, and MARSHALL, JJ., joined. POWELL, J., filed a dissenting opinion, in which BURGER, C. J., and BLACKMUN and REHNQUIST, JJ., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 73-898

Norval Goss et al., Appellants, v. Eileen Lopez et al. | On Appeal from the United States District Court for the Southern District of Ohio.

[January 22, 1975]

MR. JUSTICE WHITE delivered the opinion of the Court.

This appeal by various administrators of the Columbus, Ohio, Public School System ("CPSS") challenges the judgment of a three-judge federal court, declaring that appellees—various high school students in the CPSS—were denied due process of law contrary to the command of the Fourteenth Amendment in that they were temporarily suspended from their high schools without a hearing either prior to suspension or within a reasonable time thereafter, and enjoining the administrators to remove all references to such suspensions from the students' records.

I

Ohio law, Rev. Code § 3313.64, provides for free education to all children between the ages of six and 21. Section 3313.66 of the Code empowers the principal of an Ohio public school to suspend a pupil for misconduct for up to 10 days or to expel him. In either case, he must notify the student's parents within 24 hours and state the reasons for his action. A pupil who is expelled, or his parents, may appeal the decision to the Board of Education and in connection therewith shall be permitted to be heard at the board meeting. The board may reinstate the pupil following the hearing. No sim-

ilar procedure is provided in § 3313.66 or any other provision of state law for a suspended student. Aside from a regulation tracking the statute, at the time of the imposition of the suspensions in this case the CPSS had not itself issued any written procedure applicable to suspensions.[1] Nor, so far as the record reflects, had any of the individual high schools involved in this case.[2] Each,

[1] At the time of the events involved in this case, the only Administrative regulation on this subject was § 1010.04 of the Administrative Guide of the Columbus Public Schools which provided: "Pupils may be suspended or expelled from school in accordance with the provision of § 3313.66 of the Revised Code." Subsequent to the events involved in this lawsuit, the Department of Pupil Personnel of the CPSS issued three memoranda relating to suspension procedures dated August 16, 1971, February 21, 1973, and July 10, 1973, respectively. The first two are substantially similar to each other and require no fact-finding hearing at any time in connection with a suspension. The third, which was apparently in effect when this case was argued, places upon the principal the obligation to "investigate" "before commencing suspension procedures"; and provides as part of the procedures that the principal shall discuss the case with the pupil, so that the pupil may "be heard with respect to the alleged offense," unless the pupil is "unavailable" for such a discussion or "unwilling" to participate in it. The suspensions involved in this case occurred, and records thereof were made, prior to the effective date of these memoranda. The District Court's judgment, including its expunction order, turns on the propriety of the procedures existing at the time the suspensions were ordered and by which they were imposed.

[2] According to the testimony of Phillip Fulton, the principal of one of the high schools involved in this case, there was an informal procedure applicable at the Marion-Franklin High School. It provided that in the routine case of misconduct, occurring in the presence of a teacher, the teacher would describe the misconduct on a form provided for that purpose and would send the student, with the form, to the principal's office. There, the principal would obtain the student's version of the story, and, if it conflicted with the teacher's written version, would send for the teacher to obtain the teacher's oral version—apparently in the presence of the student. Mr. Fulton testified that, if a discrepancy still existed, the teacher's

however, had formally or informally described the conduct for which suspension could be imposed.

The nine named appellees, each of whom alleged that he or she had been suspended from public high school in Columbus for up to 10 days without a hearing pursuant to § 3313.66, filed an action against the Columbus Board of Education and various administrators of the CPSS under 42 U. S. C. § 1983. The complaint sought a declaration that § 3313.66 was unconstitutional in that it permitted public school administrators to deprive plaintiffs of their rights to an education without a hearing of any kind, in violation of the procedural due process component of the Fourteenth Amendment. It also sought to enjoin the public school officials from issuing future suspensions pursuant to § 3313.66 and to require them to remove references to the past suspensions from the records of the students in question.[3]

The proof below established that the suspensions in question arose out of a period of widespread student unrest in the CPSS during February and March of 1971. Six of the named plaintiffs, Rudolph Sutton, Tyrone Washington, Susan Cooper, Deborah Fox, Clarence Byars and Bruce Harris, were students at the Marion-Franklin

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version would be believed and the principal would arrive at a disciplinary decision based on it.

[3] The plaintiffs sought to bring the action on behalf of all students of the Columbus Public Schools suspended on or after February 1971, and a class action was declared accordingly. Since the complaint sought to restrain the "enforcement" and "operation" of a state statute "by restraining the action of any officer of such state in the enforcement or execution of such statute," a three-judge court was requested pursuant to 28 U. S. C. § 2281 and convened. The students also alleged that the conduct for which they could be suspended was not adequately defined by Ohio law. This vagueness and overbreadth argument was rejected by the court below and the students have not appealed from this part of the court's decision.

High School and were each suspended for 10 days[4] on account of disruptive or disobedient conduct committed in the presence of the school administrator who ordered the suspension. One of these, Tyrone Washington, was among a group of students demonstrating in the school auditorium while a class was being conducted there. He was ordered by the school principal to leave, refused to do so and was suspended. Rudolph Sutton, in the presence of the principal, physically attacked a police officer who was attempting to remove Tyrone Washington from the auditorium. He was immediately suspended. The other four Marion-Franklin students were suspended for similar conduct. None was given a hearing to determine the operative facts underlying the suspension, but each, together with his or her parents, was offered the opportunity to attend a conference, subsequent to the effective date of the suspension, to discuss the student's future.

Two named plaintiffs, Dwight Lopez and Betty Crome, were students at the Central High School and McGuffey Junior High School, respectively. The former was suspended in connection with a disturbance in the lunchroom which involved some physical damage to school property.[5] Lopez testified that at least 75 other students were suspended from his school on the same day. He also testified below that he was not a party to the destructive

[4] Deborah Fox was given two separate 10-day suspensions for misconduct occurring on two separate occasions—the second following immediately upon her return to school. In addition to his suspension, Sutton was transferred to another school.

[5] Lopez was actually absent from school, following his suspension, for over 20 days. This seems to have occurred because of a misunderstanding as to the length of the suspension. A letter sent to Lopez after he had been out for over 10 days purports to assume that, being over compulsory school age, he was voluntarily staying away. Upon asserting that this was not the case, Lopez was transferred to another school.

conduct but was instead an innocent bystander. Because no one from the school testified with regard to this incident, there is no evidence in the record indicating the official basis for concluding otherwise. Lopez never had a hearing.

Betty Crome was present at a demonstration at a high school different from the one she was attending. There she was arrested together with others, taken to the police station, and released without being formally charged. Before she went to school on the following day, she was notified that she had been suspended for a 10-day period. Because no one from the school testified with respect to this incident, the record does not disclose how the McGuffey Junior High School principal went about making the decision to suspend Betty Crome nor does it disclose on what information the decision was based. It is clear from the record that no hearing was ever held.

There was no testimony with respect to the suspension of the ninth named plaintiff, Carl Smith. The school files were also silent as to his suspension, although as to some, but not all, of the other named plaintiffs the files contained either direct references to their suspensions or copies of letters sent to their parents advising them of the suspension.

On the basis of this evidence, the three-judge court declared that plaintiffs were denied due process of law because they were "suspended without hearing prior to suspension or within a reasonable time thereafter," and that § 3316.66 Ohio Rev. Code and regulations issued pursuant thereto were unconstitutional in permitting such suspensions.[6] It was ordered that all references to plaintiffs' suspensions be removed from school files.

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[6] In its judgment, the court stated that the statute is unconstitutional in that it provides "for suspension without *first* affording the student due process of law." (Emphasis supplied.) However, the

Although not imposing upon the Ohio school administrators any particular disciplinary procedures and leaving them "free to adopt regulations providing for fair procedures which are consonant with the educational goals of their schools and reflective of the characteristics of their school and locality," the District Court declared that there were "minimum requirements of notice and hearing prior to suspension, except in emergency situations." In explication, the court stated that relevant case authority would: (1) permit "immediate removal of a student whose conduct disrupts the academic atmosphere of the school, endangers fellow students, teachers or school officials, or damages property"; (2) require notice of suspension proceedings to be sent to the students' parents within 24 hours of the decision to conduct them; and (3) require a hearing to be held, with the student present, within 72 hours of his removal. Finally, the court stated that, with respect to the nature of the hearing, the relevant cases required that statements in support of the charge be produced, that the student and others be permitted to make statements in defense or mitigation, and that the school need not permit attendance by counsel.

The defendant school administrators have appealed the three-judge court's decision. Because the order below granted plaintiffs' request for an injunction—ordering defendants to expunge their records—this Court has jurisdiction of the appeal pursuant to 28 U. S. C. § 1253. We affirm.

II

At the outset, appellants contend that because there is

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language of the judgment must be read in light of the language in the opinion which expressly contemplates that under some circumstances students may properly be removed from school before a hearing is held, so long as the hearing follows promptly.

no constitutional right to an education at public expense, the Due Process Clause does not protect against expulsions from the public school system. This position misconceives the nature of the issue and is refuted by prior decisions. The Fourteenth Amendment forbids the State to deprive any person of life, liberty or property without due process of law. Protected interests in property are normally "not created by the Constitution. Rather, they are created and their dimensions are defined" by an independent source such as state statutes or rules entitling the citizen to certain benefits. *Board of Regents* v. *Roth*, 408 U. S. 564, 577 (1972).

Accordingly, a state employee who under state law, or rules promulgated by state officials, has a legitimate claim of entitlement to continued employment absent sufficient cause for discharge may demand the procedural protections of due process. *Connell* v. *Higginbotham*, 403 U. S. 207 (1971); *Weiman* v. *Updegraff*, 344 U. S. 183, 191–192 (1952); *Arnett* v. *Kennedy*, 416 U. S. 134 (1974), 164 (POWELL, J., concurring); 171 (WHITE, J., concurring and dissenting). So may welfare recipients who have statutory rights to welfare as long as they maintain the specified qualifications. *Goldberg* v. *Kelly*, 397 U. S. 254 (1970). *Morrissey* v. *Brewer*, 408 U. S. 471 (1972), applied the limitations of the Due Process Clause to governmental decisions to revoke parole, although a parolee has no constitutional right to that status. In like vein was *Wolff* v. *McDonald*, 418 U. S. 539 (1974), where the procedural protections of the Due Process Clause were triggered by official cancellation of a prisoner's good-time credits accumulated under state law, although those benefits were not mandated by the Constitution.

Here, on the basis of state law, appellees plainly had legitimate claims of entitlement to a public education. Ohio Rev. Code §§ 3313.48 and 3313.64 direct local au-

thorities to provide a free education to all residents between six and 21 years of age, and a compulsory attendance law requires attendance for a school year of not less than 32 weeks. Ohio Rev. Code § 3321.04. It is true that § 3313.66 of the code permits school principals to suspend students for up to two weeks; but suspensions may not be imposed without any grounds whatsoever. All of the schools had their own rules specifying the grounds for expulsion or suspension. Having chosen to extend the right to an education to people of appellees' class generally, Ohio may not withdraw that right on grounds of misconduct absent fundamentally fair procedures to determine whether the misconduct has occurred. *Arnett* v. *Kennedy, supra,* at 164 (POWELL, J., concurring); 171 (WHITE, J., concurring and dissenting); 206 (MARSHALL, J., dissenting).

Although Ohio may not be constitutionally obligated to establish and maintain a public school system, it has nevertheless done so and has required its children to attend. Those young people do not "shed their constitutional rights" at the schoolhouse door. *Tinker* v. *Des Moines Community School District,* 393 U. S. 503, 506 (1969). "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures . . . Boards of Education not excepted." *West Virginia* v. *Barnette,* 319 U. S. 624, 637 (1943). The authority possessed by the State to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that clause.

The Due Process Clause also forbids arbitrary deprivations of liberty. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," the minimal requirements of the clause must be satisfied. *Wisconsin* v. *Constantineau*, 400 U. S. 433, 437 (1971); *Board of Regents* v. *Roth*, *supra*, at 573. School authorities here suspended appellees from school for periods of up to 10 days based on charges of misconduct. If sustained and recorded, those charges could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment.[7] It is apparent that the claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution.

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[7] Amici Curiae, Children's Defense Fund of the Washington Research Project, Inc., and the American Friends Service Committee assert in their brief that four of 12 randomly selected Ohio colleges specifically inquire of the high school of every applicant for admission whether the applicant has ever been suspended. Amici also contend that many employers request similar information.

Congress has recently enacted legislation limiting access to information contained in the files of a school receiving federal funds. Education Amendments of 1974, P. L. 93-380, § 513. That section would preclude release of "verified reports of serious or recurrent behavior patterns" to employers without written consent of the student's parents. While § 513 (b)(1)(B) permits release of such information to "other schools . . . in which the student intends to enroll," it does so only upon condition that the parent be advised of the release of the information and be given an opportunity at a hearing to challenge the content of the information to insure against inclusion of inaccurate or misleading information. The statute does not expressly state whether the parent can contest the underlying basis for a suspension, the fact of which is contained in the student's school record.

Appellants proceed to argue that even if there is a right to a public education protected by the Due Process Clause generally, the clause comes into play only when the State subjects a student to a "severe detriment or grievous loss." The loss of 10 days, it is said, is neither severe nor grievous and the Due Process Clause is therefore of no relevance. Appellee's argument is again refuted by our prior decisions; for in determining "whether due process requirements apply in the first place, we must look not to the 'weight' but to the *nature* of the interest at stake." *Board of Regents* v. *Roth, supra,* at 570–571. Appellees were excluded from school only temporarily, it is true, but the length and consequent severity of a deprivation, while another factor to weigh in determining the appropriate form of hearing, "is not decisive of the basic right" to a hearing of some kind. *Fuentes* v. *Shevin,* 407 U. S. 67, 86 (1972). The Court's view has been that as long as a property deprivation is not *de minimis,* its gravity is irrelevant to the question whether account must be taken of the Due Process Clause. *Sniadach* v. *Family Finance Corp.,* 395 U. S. 337, 342 (Harlan, J., concurring); *Boddie* v. *Connecticut,* 401 U. S. 371, 378–379; *Board of Regents* v. *Roth, supra,* p. 570 n. 8. A 10-day suspension from school is not *de minimis* in our view and may not be imposed in complete disregard of the Due Process Clause.

A short suspension is of course a far milder deprivation than expulsion. But, "education is perhaps the most important function of state and local governments." *Brown* v. *Board of Education,* 347 U. S. 483, 493 (1954), and the total exclusion from the educational process for more than a trivial period, and certainly if the suspension is for 10 days, is a serious event in the life of the suspended child. Neither the property interest in educational benefits temporarily denied nor the liberty interest

in reputation, which is also implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary.[8]

[8] Since the landmark decision of the Court of Appeals for the Fifth Circuit in *Dixon* v. *Alabama State Board of Education*, 294 F. 2d 150 (CA5), cert. denied, 368 U. S. 930 (1961), the lower federal courts have uniformly held the Due Process Clause applicable to decisions made by tax supported educational institutions to remove a student from the institution long enough for the removal to be classified as an expulsion. *Hagopian* v. *Knowlton*, 470 F. 2d 201, 211 (CA2 1970); *Wasson* v. *Trowbridge*, 382 F. 2d 807, 812 (CA2 1967); *Esteban* v. *Central Missouri State College*, 415 F. 2d 1077, 1089 (CA8 1969), cert. denied, 398 U. S. 965 (1970); *Vought* v. *Van Buren Public Schools*, 306 F. Supp. 1388 (ED Mich. 1969); *Whitfield* v. *Simpson*, 312 F. Supp. 889 (ED Ill. 1970); *Fielder* v. *Board of Education of School District of Winnebago, Neb.*, 346 F. Supp. 722, 729 (Neb. 1972); *De Jesus* v. *Penberthy*, 344 F. Supp. 70, 74 (Conn. 1972); *Soglin* v. *Kaufman*, 295 F. Supp. 978, 994 (WD Wis. 1968), aff'd, 418 F. 2d 163 (CA7 1969); *Stricklin* v. *Regents of University of Wisconsin*, 297 F. Supp. 416, 420 (WD Wis. 1969), appeal dismissed, 420 F. 2d 1257 (CA7 1970); *Buck* v. *Carter*, 308 F. Supp. 1246 (WD Wis. 1970); General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education, 45 F. R. D. 133, 147–148 (WD Mo. 1968), en banc. The lower courts have been less uniform, however, on the question whether removal from school for some shorter period may ever be so trivial a deprivation as to require no process, and, if so, how short the removal must be to qualify. Circuit courts have held or assumed the Due Process Clause applicable to long suspensions, *Pervis* v. *LaMargue Ind. School District*, 466 F. 2d 1054 (CA5 1972), to indefinite suspensions, *Sullivan* v. *Houston Independent School District*, 475 F. 2d 1071 (CA5), cert. denied, 414 U. S. 1032 (1973), the addition of a 30-day suspension to a 10-day suspension, *Williams* v. *Dade County School Board*, 441 F. 2d 299 (CA5 1971), to a 10-day suspension, *Black Students of North Fort Myers Jr.-Sr. High School* v. *Williams*, 470 F. 2d 957 (CA5 1972), to "mild" suspensions, *Farrell* v. *Joel*, 437 F. 2d 160 (CA2 1971), and *Tate* v. *Board of Education*, 453 F. 2d 975 (CA8 1972), and to a three-day suspension, *Shenley* v. *Northeast Ind. School District, Bexar County, Texas*, 462 F. 2d 960, 967 n. 4 (CA5 1972); and inapplicable to a seven-day suspension, *Linwood* v. *Peoria*, 463 F.

III

"Once it is determined that due process applies, the question remains what process is due." *Morrissey* v. *Brewer, supra,* at 481. We turn to that question, fully realizing as our cases regularly do that the interpretation and application of the Due Process Clause are intensely practical matters and that "the very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *Cafeteria Workers* v. *McElroy,* 367 U. S. 886, 895 (1961). We are also mindful of our own admonition that

"Judicial interposition in the operation of the public

2d 763 (CA7), cert. denied, 409 U. S. 1027 (1972), a three-day suspension, *Dunn* v. *Tyler,* 460 F. 2d 137 (CA5 1972), to a suspension for "not more than a few days," *Murray* v. *West Baton Rouge Parish School Board,* 472 F. 2d 438 (CA5 1973), and to all suspensions no matter how short, *Black Coalition* v. *Portland School District No. 1,* 484 F. 2d 1040 (CA5 1973). The federal district courts have held the Due Process Clause applicable to an interim suspension pending expulsion proceedings in *Stricklin* v. *Regents of University of Wisconsin, supra,* and *Buck* v. *Carter, supra,* to a 10-day suspension, *Banks* v. *Board of Public Instruction of Dade County,* 314 F. Supp. 285 (SD Fla. 1970), vacated, 401 U. S. 988 (1971) (for entry of a fresh decree so that a timely appeal might be taken to the Court of Appeals), aff'd, 450 F. 2d 1103 (CA5 1971), to suspensions of under five days, *Vail* v. *Board of Education,* 354 F. Supp. 592 (N. H. 1973), and to all suspensions, *Mills* v. *Board of Education,* 348 F. Supp. 866 (D. C. 1972), and *Givens* v. *Poe,* 346 F. Supp. 202 (WDNC 1972); and inapplicable to suspensions of 25 days, *Hernandez* v. *School District Number One, Denver, Colorado,* 315 F. Supp. 289 (Colo. 1970), to suspensions of 10 days, *Baker* v. *Downey City Board of Education,* 307 F. Supp. 517 (CD Cal. 1969), and to suspensions of eight days, *Hatter* v. *Los Angeles City High School District,* 310 F. Supp. 1309 (Cal. 1970), rev'd on other grounds, 452 F. 2d 673 (CA9 1971). In the cases holding no process necessary in connection with short suspensions, it is not always clear whether the court viewed the Due Process Clause as inapplicable, or simply felt that the process received was "due" even in the absence of some kind of hearing procedure.

school system of the Nation raises problems requiring care and restraint. . . . By and large, public education in our Nation is committed to the control of state and local authorities." *Epperson* v. *Arkansas*, 393 U. S. 97, 104.

There are certain bench marks to guide us, however. *Mullane* v. *Central Hanover Trust Co.*, 339 U. S. 306 (1950), a case often invoked by later opinions, said that "many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Id.*, at 313. "[T]he fundamental requisite of due process of law is the opportunity to be heard," *Grannis* v. *Ordean*, 234 U. S. 385, 394 (1914), a right that "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to . . . contest." *Mullane* v. *Central Hanover Trust Co.*, *supra*, at 314. *Armstrong* v. *Manzo*, 380 U. S. 545, 550 (1965); *Anti-Fascist Committee* v. *McGrath*, 341 U. S. 123, 168–169 (1951) (Frankfurter, J., concurring). At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given *some* kind of notice and afforded *some* kind of hearing. "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Baldwin* v. *Hale*, 68 U. S. 223, 233 (1863).

It also appears from our cases that the timing and content of the notice and the nature of the hearing will depend on appropriate accommodation of the competing interests involved. *Cafeteria Workers* v. *McElroy*, *supra*, at 895; *Morrissey* v. *Brewer*, *supra*, at 481. The student's interest is to avoid unfair or mistaken exclusion

from the educational process, with all of its unfortunate consequences. The Due Process Clause will not shield him from suspensions properly imposed, but it disserves both his interest and the interest of the State if his suspension is in fact unwarranted. The concern would be mostly academic if the disciplinary process were a totally accurate, unerring process, never mistaken and never unfair. Unfortunately, that is not the case, and no one suggests that it is. Disciplinarians, although proceeding in utmost good faith, frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed. The risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process.

The difficulty is that our schools are vast and complex. Some modicum of discipline and order is essential if the educational function is to be performed. Events calling for discipline are frequent occurrences and sometimes require immediate, effective action. Suspension is considered not only to be a necessary tool to maintain order but a valuable educational device. The prospect of imposing elaborate hearing requirements in every suspension case is viewed with great concern, and many school authorities may well prefer the untrammeled power to act unilaterally, unhampered by rules about notice and hearing. But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his defalcation and to let him tell his side of the story in order to make sure that an injustice is not done. "[F]airness can rarely be obtained by secret, one-sided determination of the facts decisive of rights. . . . Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at

truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." *Anti-Fascist Committee* v. *McGrath, supra,* at 170–172 (Frankfurter, J., concurring).[9]

We do not believe that school authorities must be totally free from notice and hearing requirements if their schools are to operate with acceptable efficiency. Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them,

[9] The facts involved in this case illustrate the point. Betty Crome was suspended for conduct which did not occur on school grounds, and for which mass arrests were made—hardly guarantying careful individualized factfinding by the police or by the school principal. She claims to have been involved in no misconduct. However, she was suspended for 10 days without ever being told what she was accused of doing or being given an opportunity to explain her presence among those arrested. Similarly, Dwight Lopez was suspended, along with many others, in connection with a disturbance in the lunchroom. Lopez says he was not one of those in the lunchroom who was involved. However, he was never told the basis for the principal's belief that he was involved, nor was he ever given an opportunity to explain his presence in the lunchroom. The school principals who suspended Crome and Lopez may have been correct on the merits, but it is inconsistent with the Due Process Clause to have made the decision that misconduct had occurred without at some meaningful time giving Crome or Lopez an opportunity to persuade the principals otherwise.

We recognize that both suspensions were imposed during a time of great difficulty for the school administrations involved. At least in Lopez' case there may have been an immediate need to send home everyone in the lunchroom in order to preserve school order and property; and the administrative burden of providing 75 "hearings" of any kind is considerable. However, neither factor justifies a disciplinary suspension without *at any time* gathering facts relating to Lopez specifically, confronting him with them, and giving him an opportunity to explain.

an explanation of the evidence the authorities have and an opportunity to present his side of the story. The clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school.[10]

There need be no delay between the time "notice" is given and the time of the hearing. In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis of the accusation is. Lower courts which have addressed the question of the *nature* of the procedures required in short suspension cases have reached the same conclusion. *Tate* v. *Board of Education, supra,* at 979; *Vail* v. *Board of Education, supra,* at 603. Since the hearing may occur almost immediately following the misconduct, it follows that as a general rule notice and hearing should precede removal of the student from school. We agree with the District Court, however, that there are recurring situations in which prior notice and hearing cannot be insisted upon. Students whose

[10] Appellants point to the fact that some process is provided under Ohio law by way of judicial review. Ohio Rev. Code § 2501.06. Appellants do not cite any case in which this general administrative review statute has been used to appeal from a disciplinary decision by a school official. If it be assumed that it could be so used, it is for two reasons insufficient to save inadequate procedures at the school level. First, although new proof may be offered in a § 2501.06 proceeding, *Shaker Coventry Corp.* v. *Shaker Heights,* 176 N. E. 2d 332, the proceeding is not *de novo*. *In re Locke,* 294 N. E. 2d 230. Thus the decision by the school—even if made upon inadequate procedures—is entitled to weight in the court proceeding. Second, without a demonstration to the contrary, we must assume that delay will attend any § 2501.06 proceeding, that the suspension will not be stayed pending hearing, and that the student meanwhile will irreparably lose his educational benefits.

presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable, as the District Court indicated.

In holding as we do, we do not believe that we have imposed procedures on school disciplinarians which are inappropriate in a classroom setting. Instead we have imposed requirements which are, if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions. Indeed, according to the testimony of the principal of Marion-Franklin High School, that school had an informal procedure, remarkably similar to that which we now require, applicable to suspensions generally but which was not followed in this case. Similarly, according to the most recent memorandum applicable to the entire CPSS, see n. 1, *supra*, school principals in the CPSS are now required by local rule to provide at least as much as the constitutional minimum which we have described.

We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge or to call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trial type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.

On the other hand, requiring effective notice and in-

formal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect. He may then determine himself to summon the accuser, permit cross-examination and allow the student to present his own witnesses. In more difficult cases, he may permit counsel. In any event, his discretion will be more informed and we think the risk of error substantially reduced.

Requiring that there be at least an informal give-and-take between student and disciplinarian, preferably prior to the suspension, will add little to the factfinding function where the disciplinarian has himself witnessed the conduct forming the basis for the charge. But things are not always as they seem to be, and the student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context.

We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. Nor do we put aside the possibility that in unusual situations, although involving only a short suspension, something more than the rudimentary procedures will be required.

IV

The District Court found each of the suspensions involved here to have occurred without a hearing, either before or after the suspension, and that each suspension was therefore invalid and the statute unconstitutional insofar as it permits such suspensions without notice or hearing. Accordingly, the judgment is

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 73–898

Norval Goss et al., Appellants, *v.* Eileen Lopez et al.	On Appeal from the United States District Court for the Southern District of Ohio.

[January 22, 1975]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN, and MR. JUSTICE REHNQUIST join, dissenting.

The Court today invalidates an Ohio statute that permits student suspensions from school without a hearing "for not more than ten days."[1] The decision unnecessarily opens avenues for judicial intervention in the operation of our public schools that may affect adversely the quality of education. The Court holds for the first time that the federal courts, rather than educational officials and state legislatures, have the authority to determine the rules applicable to routine classroom discipline of children and teenagers in the public schools. It justifies this unprecedented intrusion into the process of elementary and secondary education by identifying a new constitutional right: the right of a student not to be suspended for as much as a single day without notice and a due process hearing either before or promptly following the suspension.[2]

[1] The Ohio Statute, § 3313.66 of the Ohio Rev. Code, actually is a limitation on the time-honored practice of school authorities determining themselves the appropriate duration of suspensions. The statute allows the superintendent or principal of a public school to suspend a pupil "for *not more than ten days* . . ." (italics supplied); and requires notification of the parent or guardian in writing within 24 hours of any suspension.

[2] Section 3313.66 also provides authority for the expulsion of pupils, but requires a hearing thereon by the school board upon request of

The Court's decision rests on the premise that, under Ohio law, education is a property interest protected by the Fourteenth Amendment's Due Process Clause and therefore that any suspension requires notice and a hearing.[3] In my view, a student's interest in education is not infringed by a suspension within the limited period prescribed by Ohio law. Moreover, to the extent that there may be some arguable infringement, it is too speculative, transitory and insubstantial to justify imposition of a *constitutional* rule.

I

Although we held in *San Antonio Independent School Dist.* v. *Rodriguez*, 411 U. S. 1, 35 (1973), that education is not a right protected by the Constitution, Ohio has elected by statute to provide free education for all youths age six to 21, Ohio Rev. Code §§ 3313.48, 3313.64, with children under 18 years of age being compelled to attend school. *Id.*, at § 3321.01 *et seq.* State law, therefore, extends the right of free public school education to Ohio students in accordance with the education laws of that State. The right or entitlement to education so created is protected in a proper case by the Due Process Clause. See, *e. g.*, *Board of Regents* v. *Roth*, 408 U. S. 564 (1972); *Arnett* v. *Kennedy*, 416 U. S. 134, 164 (1974) (POWELL, J., concurring). In my view, this is not such a case. In identifying property interests subject to due process

a parent or guardian. The rights of pupils expelled are not involved in this case, which concerns only the limited discretion of school authorities to suspend for not more than 10 days. Expulsion, usually resulting at least in loss of a school year or semester, is an incomparably more serious matter than the brief suspension, traditionally used as the principal sanction for enforcing routine discipline. The Ohio statute recognizes this distinction.

[3] The Court speaks of "exclusion from the educational process for more than a trivial period . . . ," *ante*, at 10, but its opinion makes clear that even one day's suspension invokes the constitutional procedure mandated today.

protections, the Court's past opinions make clear that these interests "are created and their *dimensions are defined* by existing rules and understandings that stem from an independent source such as state law." *Board of Regents* v. *Roth, supra,* 408 U. S., at 577 (emphasis supplied). The Ohio statute that creates the right to a "free" education also explicitly authorizes a principal to suspend a student for up to 10 days. Ohio Rev. Stat. §§ 3313.48, 3313.64, 3313.66. Thus the very legislation which "defines" the "dimension" of the student's entitlement, while providing a right to education generally, does not establish this right free of discipline imposed in accord with Ohio law. Rather, the right is encompassed in the entire package of statutory provisions governing education in Ohio—of which the power to suspend is one.

The Court thus disregards the basic structure of Ohio law in posturing this case as if Ohio had conferred an unqualified right to education, thereby compelling the school authorities to conform to due process procedures in imposing the most routine discipline.[4]

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[4] The Court apparently reads into Ohio law by implication a qualification that suspensions may be imposed only for "cause," thereby analogizing this case to the Civil Service laws considered in *Arnett* v. *Kennedy, supra.* To be sure, one may assume that pupils are not suspended at the whim or caprice of the school official, and the statute does provide for notice of the suspension with the "reasons therefor." But the same statute draws a sharp distinction between suspension and the far more drastic sanction of expulsion. A hearing is required only for the latter. To follow the Court's analysis, one must conclude that the legislature nevertheless intended—without saying so—that suspension also is of such consequence that it may be imposed only for causes which can be justified at a hearing. The unsoundness of reading this sort of requirement into the statute is apparent from a comparison with *Arnett.* In that case, Congress *expressly* provided that nonprobationary federal employees should be discharged only for "cause." This requirement reflected congressional recognition of the serious-

But however one may define the entitlement to education provided by Ohio law, I would conclude that a deprivation of not more than 10 days' suspension from school, imposed as a routine disciplinary measure, does not assume constitutional dimensions. Contrary to the Court's assertion, our cases support rather than "refute" appellant's argument that "the Due Process Clause . . . comes into play only when the State subjects a student to a 'severe detriment or a grievous loss.'" *Ante*, at 10. Recently, the Court reiterated precisely this standard for analyzing due process claims:

> "Whether *any* procedural protections are due depends on the extent to which an individual will be 'condemned to suffer *grievous* loss.' *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 168 (1951) (Frankfurter, J., concurring), quoted in *Goldberg* v. *Kelly*, 397 U. S. 254, 263 (1970)." *Morrissey* v. *Brewer*, 408 U. S. 471, 481 (1972) (emphasis supplied).

In *Morrissey* we applied that standard to require due process procedures for parole revocation on the ground that revocation "inflicts a 'grievous loss' on the parolee and often on others." *Id.*, at 482. See also *Board of Regents* v. *Roth*, *supra*, 408 U. S., at 573 ("seriously damage" reputation and standing); *Bell* v. *Burson*, 402 U. S. 535, 539 (1971) ("important interests of the licensees"); *Boddie* v. *Connecticut*, 401 U. S. 371, 379 (1971) ("significant property interest").[5]

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ness of discharging such employees. There simply is no analogy between *termination* of nonprobationary employment of a civil service employee and the *suspension* of a public school pupil for not more than 10 days. Even if the Court is correct in implying some concept of justifiable cause in the Ohio procedure, it could hardly be stretched to the constitutional proportions found present in *Arnett*.

[5] Indeed, the Court itself quotes from a portion of Justice Frank-

The Ohio suspension statute allows no serious or significant infringement of education. It authorizes only a maximum suspension of eight school days, less than 5% of the normal 180-day school year. Absences of such limited duration will rarely affect a pupil's opportunity to learn or his scholastic performance. Indeed, the record in this case reflects no educational injury to appellees. Each completed the semester in which the suspension occurred and performed at least as well as he or she had in previous years.[6] Despite the Court's unsupported speculation that a suspended student could be "seriously damaged" (*ante*, at 9), there is no factual showing of any such damage to appellees.

The Court also relies on a perceived deprivation of "liberty" resulting from any suspension, arguing—again without factual support in the record pertaining to these appellees—that a suspension harms a student's reputation. In view of the Court's decision in *Board of Regents* v. *Roth*, *supra*, I would have thought that this argument was plainly untenable. Underscoring the need for "serious damage" to reputation, the *Roth* Court held that a nontenured teacher who is not rehired by a public university could not claim to

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furter's concurrence in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, *supra*, which explicitly refers to "a person in jeopardy of *serious loss*." 341 U. S., at 172; see *ante*, at 14 (emphasis supplied).

Nor is the "de minimis" standard referred to by the Court relevant in this case. That standard was first stated by Justice Harlan in a concurring opinion in *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337, 342 (1969), and then quoted in a footnote to the Court's opinion in *Fuentes* v. *Shevin*, 407 U. S. 69, 90, n. 21 (1972). Both *Sniadach* and *Fuentes*, however, involved resolution of property disputes between two private parties claiming an interest in the same property. Neither case pertained to an interest conferred by the State.

[6] Appendix, at 163–171 (testimony of Norval Goss, Director of Pupil Personnel). See opinion of the three-judge court, Jurisdictional Statement, at 42, 44.

suffer sufficient reputational injury to require constitutional protections.[7] Surely a brief suspension is of less serious consequence to the reputation of a teenage student.

II

In prior decisions, this Court has explicitly recognized that school authorities must have broad discretionary authority in the daily operation of public schools. This includes wide latitude with respect to maintaining discipline and good order. Addressing this point specifically, the Court stated in *Tinker* v. *Des Moines School Dist.*, 393 U. S. 503, 507 (1969):

> "[T]he Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." [8]

Such an approach properly recognizes the unique nature of public education and the correspondingly limited role of the judiciary in its supervision. In *Epperson* v. *Arkansas*, 393 U. S. 97, 104 (1968), the Court stated:

> "By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily opera-

[7] See also *Wisconsin* v. *Constineau*, 400 U. S. 433, 437 (1971), quoting the "grievous loss" standard first articulated in *Joint Anti-Fascist Committee* v. *McGrath*, *supra*.

[8] In dissent on the First Amendment issue, Mr. Justice Harlan recognized the Court's basic agreement on the limited role of the judiciary in overseeing school disciplinary decisions:

"I am reluctant to believe that there is any disagreement between the majority and myself on the proposition that school officials should be accorded the widest authority in maintaining discipline and good order in their institutions." *Id.*, at 526.

tion of school systems and which do not directly and sharply implicate basic constitutional values."

The Court today turns its back on these precedents. It can hardly seriously be claimed that a school principal's decision to suspend a pupil for a single day would "directly and sharply implicate basic constitutional values." *Epperson, supra.*

Moreover, the Court ignores the experience of mankind, as well as the long history of our law, recognizing that there *are* differences which must be accommodated in determining the rights and duties of children as compared with those of adults. Examples of this distinction abound in our law: in contracts, in torts, in criminal law and procedure, in criminal sanctions and rehabilitation, and in the right to vote and to hold office. Until today, and except in the special context of the First Amendment issue in *Tinker*, the educational rights of children and teenagers in the elementary and secondary schools have not been analogized to the rights of adults or to those accorded college students. Even with respect to the First Amendment, the rights of children have not been regarded as "coextensive with those of adults." MR. JUSTICE STEWART, concurring in *Tinker, supra*, at 515.

A

I turn now to some of the considerations which support the Court's former view regarding the comprehensive authority of the States and school officials "to prescribe and control conduct in the schools." *Tinker, supra*, at 507. Unlike the divergent and even sharp conflict of interests usually present where due process rights are asserted, the interests here implicated—of the State through its schools and of the pupils—are essentially congruent.

The State's interest, broadly put, is in the proper functioning of its public school system for the benefit of *all* pupils and the public generally. Few rulings would interfere more extensively in the daily functioning of schools than subjecting routine discipline to the formalities and judicial oversight of due process. Suspensions are one of the traditional means—ranging from keeping a student after class to permanent expulsion—used to maintain discipline in the schools. It is common knowledge that maintaining order and reasonable decorum in school buildings and classrooms is a major educational problem, and one which has increased significantly in magnitude in recent years.[9] Often the teacher, in protecting the rights of other children to an education (if not his or their safety), is compelled to rely on the power to suspend.

The facts set forth in the margin [10] leave little room for doubt as to the magnitude of the disciplinary problem in

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[9] See generally S. Bailey, Disruption in Urban Secondary Schools (1970), which summarizes some of the recent surveys on school disruption. A Syracuse University study, for example, found that 85% of the schools responding reported some type of significant disruption in the years 1967–1970.

[10] An *amicus* brief filed by the Children's Defense Fund states that *at least 10%* of the junior and senior high school students in the States sampled were suspended *one or more* times in the 1972–1973 school year. The data on which this conclusion rests were obtained from an extensive survey prepared by the Office for Civil Rights of the Department of Health, Education, and Welfare. The Children's Defense Fund reviewed the suspension data for five States—Arkansas, Maryland, New Jersey, Ohio, and South Carolina.

Likewise, an *amicus* brief submitted by several school associations in Ohio indicates that the number of suspensions is significant: in 1972–1973, 4,054 students out of a school enrollment of 81,007 were suspended in Cincinnati; 7,352 of 57,000 students were suspended in Akron; and 14,598 of 142,053 students were suspended in Cleveland. See also the Office of Civil Rights Survey, *supra*, finding that approximately 20,000 students in New York City, 12,000 in Cleveland, 9,000 in Miami, and 9,000 in Memphis were suspended at least once

the public schools, or as to the extent of reliance upon the right to suspend. They also demonstrate that if hearings were required for a substantial percentage of short-term suspensions, school authorities would have time to do little else.

B

The State's generalized interest in maintaining an orderly school system is not incompatible with the individual interest of the student. Education in any meaningful sense includes the inculcation of an understanding in each pupil of the necessity of rules and obedience thereto. This understanding is no less important than learning to read and write. One who does not comprehend the meaning and necessity of discipline is handicapped not merely in his education but throughout his subsequent life. In an age when the home and church play a diminishing role in shaping the character and value judgments of the young, a heavier responsibility falls upon the schools. When an immature student merits censure for his conduct, he is rendered a disservice if appropriate sanctions are not applied or if procedures for their application are so formalized as to invite a challenge to the teacher's authority [11]—an invitation which rebellious or even merely spirited teenagers are likely to accept.

The lesson of discipline is not merely a matter of the student's self-interest in the shaping of his own character and personality; it provides an early understanding of the relevance to the social compact of respect for the rights of others. The classroom is the laboratory in which this lesson of life is best learned. Mr. Justice Black summed it up:

"School discipline, like parental discipline, is an

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during the 1972–1973 school year. Even these figures are probably somewhat conservative since some schools did not reply to the survey.

[11] See generally J. Dobson, Dare to Discipline (1972).

integral and important part of training our children to be good citizens—to be better citizens." *Tinker, supra*, at 524 (dissenting opinion).

In assessing in constitutional terms the need to protect pupils from unfair minor discipline by school authorities, the Court ignores the commonality of interest of the State and pupils in the public school system. Rather, it thinks in traditional judicial terms of an adversary situation. To be sure, there will be the occasional pupil innocent of any rule infringement who is mistakenly suspended or whose infraction is too minor to justify suspension. But, while there is no evidence indicating the frequency of unjust suspensions, common sense suggests that they will not be numerous in relation to the total number, and that mistakes or injustices will usually be righted by informal means.

C

One of the more disturbing aspects of today's decision is its indiscriminate reliance upon the judiciary, and the adversary process, as the means of resolving many of the most routine problems arising in the classroom. In mandating due process procedures the Court misapprehends the reality of the normal teacher-pupil relationship. There is an ongoing relationship, one in which the teacher must occupy many roles—educator, adviser, friend and, at times, parent-substitute.[12] It is rarely adversary in nature except with respect to the chronically disruptive or insubordinate pupil whom the teacher must be free to discipline without frustrating formalities.[13]

[12] The role of the teacher in our society historically has been an honored and respected one, rooted in the experience of decades that has left for most of us warm memories of our teachers, especially those of the formative years of primary and secondary education.

[13] In this regard, the relationship between a student and teacher

The Ohio statute, providing as it does for due notice both to parents and the Board, is compatible with the teacher-pupil relationship and the informal resolution of mistaken disciplinary action. We have relied for generations upon the experience, good faith and dedication of those who staff our public schools,[14] and the nonadversary means of airing grievances that always have been available to pupils and their parents. One would have thought before today's opinion that this informal method of resolving differences was more compatible with the interests of all concerned than resort to any constitution-

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is manifestly different from that between a welfare administrator and a recipient (see *Goldberg* v. *Kelly*, *supra*), a motor vehicle department and a driver (see *Bell* v. *Burson*, *supra*), a debtor and a creditor (see *Sniadach* v. *Family Finance Corp.*, *supra*; *Fuentes* v. *Shevin*, *supra*; *Mitchell* v. *Grant*, 416 U. S. 600 (1974)), a parole officer and a parolee (see *Morrissey* v. *Brewer*, *supra*), or even an employer and an employee (see *Arnett* v. *Kennedy*, *supra*). In many of these noneducation settings there is—for purposes of this analysis—a "faceless" administrator dealing with an equally "faceless" recipient of some form of government benefit or license; in others, such as the garnishment and repossession cases, there is a conflict of interest relationship. Our public school system, however, is premised on the belief that teachers and pupils should not be "faceless" to each other. Nor does the educational relationship present a typical "conflict of interest." Rather, the relationship traditionally is marked by a coincidence of interests.

Yet the Court, relying on cases such as *Sniadach* and *Fuentes*, apparently views the classroom of teenagers as comparable to the competitive and adversary environment of the adult, commercial world.

[14] A traditional factor in any due process analysis is "the protection implicit in the office of the functionary whose conduct is challenged . . . ." *Joint Anti-Fascist Committee* v. *McGrath*, *supra*, at 163 (Frankfurter, J., concurring). In the public school setting there is a high degree of such protection since a teacher has responsibility for, and a commitment to, his pupils that is absent in other due process contexts.

alized procedure, however blandly it may be defined by the Court.

D

In my view, the constitutionalizing of routine classroom decisions not only represents a significant and unwise extension of the Due Process Clause; it also was quite unnecessary in view of the safeguards prescribed by the Ohio statute. This is demonstrable from a comparison of what the Court mandates as required by due process with the protective procedures it finds constitutionally insufficient.

The Ohio statute, limiting suspensions to not more than eight school days, requires *written* notice including the "reasons therefor" to the student's parents and to the Board of Education within 24 hours of any suspension. The Court only requires oral *or* written notice to the pupil, with no notice being required to the parents or the Board of Education. The mere fact of the statutory requirement is a deterrent against arbitrary action by the principal. The Board, usually elected by the people and sensitive to constituent relations, may be expected to identify a principal whose record of suspensions merits inquiry. In any event, parents placed on written notice may exercise their rights as constituents by going directly to the Board or a member thereof if dissatisfied with the principal's decision.

Nor does the Court's due process "hearing" appear to provide significantly more protection than that already available. The Court holds only that the principal must listen to the student's "version of the events," either before suspension or thereafter—depending upon the circumstances. *Ante,* at 17–18. Such a truncated "hearing" is likely to be considerably less meaningful than the opportunities for correcting mistakes already available

to students and parents. Indeed, in this case all of the students and parents were offered an opportunity to attend a conference with school officials.

In its rush to mandate a constitutional rule, the Court appears to give no weight to the practical manner in which suspension problems normally would be worked out under Ohio law.[15] One must doubt, then, whether the constitutionalization of the student-teacher relationship, with all of its attendant doctrinal and practical difficulties, will assure in any meaningful sense greater protection than that already afforded under Ohio law.

III

No one can foresee the ultimate frontiers of the new "thicket" the Court now enters. Today's ruling appears to sweep within the protected interest in education a multitude of discretionary decisions in the educational process. Teachers and other school authorities are required to make many decisions that may have serious consequences for the pupil. They must decide, for example, how to grade the student's work, whether a student passes or fails a course,[16] whether he is to be promoted, whether he is required to take certain subjects, whether he may be excluded from interscholastic athletics[17] or other extracurricular activities, whether he may be removed from one school and sent to another, whether he may be bused long distances when available schools are nearby, and whether he should be placed in a "general," "vocational," or "college-preparatory" track.

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[15] The Court itself recognizes that the requirements it imposes are, "if anything, less than a fair-minded school principal would impose on himself in order to avoid unfair suspensions." *Ante*, at 17.

[16] See *Connelly* v. *U. of Vermont*, 244 F. Supp. 156 (Vt. 1956).

[17] See *Kelly* v. *Metropolitan County Board of Education of Nashville*, 393 F. Supp. 485 (MD Tenn. 1968).

In these and many similar situations claims of impairment of one's educational entitlement identical in principle to those before the Court today can be asserted with equal or greater justification. Likewise, in many of these situations, the pupil can advance the same types of speculative and subjective injury given critical weight in this case. The District Court, relying upon generalized opinion evidence, concluded that a suspended student may suffer psychological injury in one or more of the ways set forth in the margin below.[18] The Court appears to adopt this rationale. See *ante*, at 9.

It hardly need be said that if a student, as a result of a day's suspension, suffers "a blow" to his "self esteem," "feels powerless," views "teachers with resentment," or feels "stigmatized by his teachers," identical psychological harms will flow from many other routine and necessary school decisions. The student who is given a failing grade, who is not promoted, who is excluded from certain extracurricular activities, who is assigned to a school reserved for children of less than average ability, or who is placed in the "vocational" rather than the "college preparatory" track, is unlikely to suffer any less psychological injury than if he were suspended for a day for a relatively minor infraction.[19]

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[18] The psychological injuries so perceived were as follows:

"1. The suspension is a blow to the student's self-esteem.

"2. The student feels powerless and helpless.

"3. The student views school authorities and teachers with resentment, suspicion and fear.

"4. The student learns withdrawals as a mode of problem solving.

"5. The student has little perception of the reasons for the suspension. He does not know what offending acts he committed.

"6. The student is stigmatized by his teachers and school administrators as a deviant. They expect the student to be a troublemaker in the future." (Decision of three-judge District Court, Jurisdictional Statement, at 43.)

[19] There is, no doubt, a school of modern psychological or psychi-

If, as seems apparent, the Court will now require due process procedures whenever such routine school decisions are challenged, the impact upon public education will be serious indeed. The discretion and judgment of federal courts across the land often will be substituted for that of the 50-state legislatures, the 14,000 school boards [20] and the 2,000,000 [21] teachers who heretofore have been responsible for the administration of the American public school system. If the Court perceives a rational and analytically sound distinction between the discretionary decision by school authorities to suspend a pupil for a brief period, and the types of discretionary school decisions described above, it would be prudent to articulate it in today's opinion. Otherwise, the federal courts should prepare themselves for a vast new role in society.

IV

Not so long ago, state deprivations of the most significant forms of state largesse were not thought to re-

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atric persuasion than maintains that *any* discipline of the young is detrimental. Whatever one may think of the wisdom of this unproved theory, it hardly affords dependable support for a *constitutional* decision. Moreover, even the theory's proponents would concede that the magnitude of injury depends primarily upon the individual child or teenager. A classroom reprimand by the teacher may be more traumatic to the shy, timid introvert than explusion would be the aggressive, rebellious extrovert. In my view we tend to lose our sense of perspective and proportion in a case of this kind. For the average, normal child—the vast majority—suspension for a few days is simply *not* a detriment; it is a commonplace occurrence, with some 10% of all students being suspended; it leaves no scars; affects no reputations; indeed, it often may be viewed by the young as a badge of some distinction and a welcome holiday.

[20] This estimate was supplied by the National School Board Association, Washington, D. C.

[21] See U. S. Office of Education, Elementary and Secondary Public School Statistics, 1972–1973.

quire due process protection on the ground that the deprivation resulted only in the loss of a state provided "benefit." *E. g., Bailey* v. *Richardson*, 182 F. 2d 46 (CADC), aff'd by an equally divided Court, 341 U. S. 918 (1951). In recent years the Court, wisely in my view, has rejected the "wooden distinction between 'rights' and 'privileges,'" *Board of Regents* v. *Roth, supra*, 408 U. S., at 571, and looked instead to the significance of the state created or enforced right and to the substantiality of the alleged deprivation. Today's opinion appears to abandon this reasonable approach by holding in effect that government infringement of any interest to which a person is entitled, no matter what the interest or how inconsequential the infringement, requires *constitutional* protection. As it is difficult to think of any less consequential infringement than suspension of a junior high school student for a single day, it is equally difficult to perceive any principled limit to the new reach of procedural due process.[22]

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[22] Some half dozen years ago, the Court extended First Amendment rights under limited circumstances to public school pupils. Mr. Justice Black, dissenting, viewed the decision as ushering in "an entirely new era in which the power to control pupils by the elected 'officials of state-supported public schools . . .' is in ultimate effect transferred to the Supreme Court." *Tinker, supra*, at 515. There were some who thought Mr. Justice Black was unduly concerned. But the prophesy of Mr. Justice Black is now being fulfilled. In the few years since *Tinker* there have been literally hundreds of cases by school children alleging violation of their constitutional rights. This flood of litigation, between pupils and school authorities, was triggered by a narrowly written First Amendment case which I could well have joined on its facts. One can only speculate as to the extent to which public education will be disrupted by giving every school child the power to contest *in court* any decision made by his teacher which arguably infringes the state conferred right to education.